

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
WISCONSIN ELECTRIC POWER COMPANY,)
WISCONSIN PUBLIC SERVICE CORPORATION,)
and **UPPER MICHIGAN ENERGY RESOURCES**)
CORPORATION for approval, pursuant to)
MCL 460.6q, for the transfer of control of)
WISCONSIN ELECTRIC POWER COMPANY's)
Michigan electric distribution assets and)
WISCONSIN PUBLIC SERVICE CORPORATION's)
Michigan electric and natural gas distribution assets)
to **UPPER MICHIGAN ENERGY RESOURCES**)
CORPORATION, and related approvals.)
_____)

Case No. U-18061

At the December 9, 2016 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On August 6, 2014, in Case No. U-17682, Wisconsin Energy Corporation and Integrys Energy Group, Inc., sought approval, pursuant to MCL 460.6q, for the transfer of control of Wisconsin Public Service Corporation (WPS Corp) and Michigan Gas Utilities Corporation (MGUC) from Integrys Energy Group, Inc., to Wisconsin Energy Corporation. On April 23, 2015, the Commission issued an order in that matter approving an Amended and Restated Settlement Agreement (ARSA) executed by the parties to that proceeding. Among other things, Paragraph 6g of the ARSA describes Wisconsin Energy Corporation's intention to petition the Commission for

the creation of a Michigan-only jurisdictional utility at some point in the future. After receiving approval and completing the transfer of control, Wisconsin Energy Corporation was renamed WEC Energy Group, Inc. (WEC), and Integrys Energy Group, Inc., transitioned to Integrys Holding, Inc. (Integrys).

On June 9, 2016, the Commission issued an order in Case No. U-17682 and in this proceeding, determining that WEC could file its application no sooner than June 14, 2016.

On June 14, 2016, Wisconsin Electric Power Company (WEPCo) and WPS Corp filed an application in this docket for approval, pursuant to MCL 460.6q, of the transfer of WEPCo's Michigan electric distribution assets and WPS Corp's Michigan electric and natural gas distribution assets to Upper Michigan Energy Resources Corporation (UMERC), a to-be-formed Michigan jurisdictional regulated utility providing service to electric and natural gas customers only in Michigan. WEPCo is a wholly owned subsidiary of WEC. WPS Corp is a wholly-owned subsidiary of Integrys, which is a wholly-owned subsidiary of WEC. WEPCo, WPS Corp, and UMERC are collectively referred to as the Joint Applicants.

On July 8, 2016, a prehearing conference was held before Administrative Law Judge Martin D. Snider (ALJ). The ALJ granted intervention to Fibrek, Cloverland Electric Cooperative (Cloverland), Tilden Mining Company, L.C. (Tilden), and the Michigan Department of the Attorney General (Attorney General). The Commission Staff (Staff) also participated in the proceedings. The parties agreed to a schedule.

On July 13, 2016, the ALJ issued a ruling adopting a protective order and a scheduling memo indicating that the Commission would read the record in this matter.

On July 20, 2016, Verso Corporation (Verso) filed a petition for leave to intervene out of time. On August 18, 2016, the parties filed a joint stipulation to the admission of Verso as a party.

On August 19, 2106, the ALJ issued a revised schedule.¹

On September 9, 2016, the Staff, the Attorney General, Cloverland, and Tilden filed direct testimony. On September 20, 2016, the Joint Applicants and the Attorney General filed rebuttal testimony. On October 4, 2016, the Staff filed a motion to strike portions of the testimony of the Attorney General's witness.

An evidentiary hearing took place on October 14, 2016. At that hearing, the Attorney General indicated his agreement to strike the testimony that was the subject of the Staff's motion. Pre-filed direct and rebuttal testimony was bound into the record and cross-examination took place. The record consists of 329 pages of transcript and 42 exhibits, some admitted confidentially.

On October 14, 2016, the parties filed a settlement agreement. Additionally, on October 14, 2016, the parties filed a joint stipulation to admit Exhibit AG-3 into the record.

On November 7, 2016, the Commission issued an order seeking additional information on issues associated with the proposed settlement, and setting dates for further briefing. On November 23, 2016, Verso, Tilden, the Attorney General, the Staff, and the Joint Applicants filed initial briefs.² On December 1, 2016, the Attorney General filed a reply brief.

¹ Cases brought under MCL 460.6q are subject to an extremely tight 180-day schedule. MCL 460.6q(5). Due to the short timeframe, Mich Admin Code, R 460.303(3) provides the milestone dates for filings during the 180-day period, and further provides that these dates may be amended on "a showing of good cause." The revised schedule dated August 19, 2016, reflects the removal of dates for the filing of the Proposal for Decision (PFD), exceptions, and replies to exceptions from the schedule. Removal of these milestones created 36 additional days in the schedule. The August 19 schedule awarded 31 of these days to the proceeding, and five days to the Commission's timeline for issuing this order. The issue of good cause was not addressed. The Commission offers the following guidance for future reference: the decision to read the record provides good cause for amending the schedule under R 460.303(3). However, a substantial showing of good cause should be required in order to allocate most of the freed-up time to the parties, when the Commission has chosen to forego the significant benefits of a PFD.

² The initial briefs of the Staff and the Joint Applicants contain confidential portions.

The Application and Supporting Testimony

WEPCo provides retail electric service to approximately 27,500 full service customers and approximately 50 choice customers in the Upper Peninsula (UP). Its rates were last set in the June 26, 2012 order in Case No. U-16830. WPS Corp has approximately 9,000 full service electric customers, 5,300 gas customers, 16 electric choice customers, and 17 gas transportation customers in the UP. Its electric rates were last set in the April 23, 2015 order in Case No. U-17669, and its natural gas rates were last set in the June 7, 1983 order in Case No. U-7502.

The Joint Applicants seek approval of the transfer of control of the Michigan based electric distribution assets of WEPCo and WPS Corp, and the Michigan based gas distribution assets and a former manufactured gas plant owned by WPS Corp, to UMEREC, a new, standalone, Michigan jurisdictional entity serving electric and gas customers in the UP (the proposed transaction). UMEREC will be a Michigan corporation with offices in Menominee and Iron Mountain. UMEREC would begin operations on January 1, 2017, with approximately 36,500 full service electric customers, 5,300 gas customers, 66 electric choice customers, and 17 gas transportation customers. The proposed transaction involves no electric generation assets,³ and no wholesale customers.

A description of the proposed transaction was provided in the testimony of James A. Schubilske, Vice President and Treasurer of WEC. According to Mr. Schubilske, in summary, WEPCo would transfer to UMEREC all of WEPCo's Michigan jurisdictional distribution substations, distribution lines, and other distribution assets used in providing retail electric service in Michigan (as well as other assets) as described in the Contribution Agreement between WEPCo

³ WEPCo will retain the Presque Isle Power Plant (PIPP) generation assets, and WPS Corp will retain its hydroelectric generation assets.

and UMER, Exhibit A-5. WPS Corp would transfer all of WPS Corp's Michigan jurisdictional electric and natural gas distribution assets, (as well as other assets), and a former manufactured gas plant site (which has been remediated) located in Menominee County, to UMER as described in the Contribution Agreement between WPS Corp and UMER, Exhibit A-6. WEPCo would transfer to UMER all of WEPCo's Michigan retail full service and choice customers (except for Tilden and Empire Iron Mining Partnership (collectively, the Mines)), and WPS Corp would transfer all of WPS Corp's retail full requirements electric and gas customers, choice electric customers, and gas transportation customers to UMER. UMER would begin providing service to the transferred customers on January 1, 2017.

WEPCo also proposes to transfer to UMER the substations, distribution lines, and other distribution assets used in providing retail electric service to the Mines in Michigan on January 1, 2017. However, WEPCo would continue to serve the Mines (retaining the right to use those distribution assets) until the termination of the 2015-2019 Large Curtailable Special Contracts between WEPCo and the Mines approved in the April 23, 2015 order in Case No. U-17862 (Mines' Special Contracts), at which time WEPCo will transfer the Mines as customers to UMER. 2 Tr 75-76. Additionally, in August 2016, WEC and Tilden entered into a special contract pursuant to which UMER will provide service to Tilden and will build new generation in the UP (2016 Special Contract). Settlement Agreement, Attachment A. The 2016 Special Contract has not yet been approved by the Commission. The new generation would be in the range of 170 megawatts (MW).

Mr. Schubilske states that the proposed transaction is consistent with the ARSA, p. 7, which states "WEC further agrees to the creation of a Michigan-only jurisdictional utility to facilitate this long-term solution, if reasonable and prudent, with timing to be determined by the MPSC."

“Long-term solution” in this context refers to electric generation in the UP. The ARSA provides that UMERL will file an application under MCL 460.6s requesting a certificate of necessity (CON) for the new power plant. Mr. Schubilske supports the timing of the request, saying that if UMERL is formed now, there will be no need to obtain approval from the Public Service Commission of Wisconsin (PSCW) of the proposed transaction or the power purchase agreements (PPAs), and that formation of UMERL at this time will allow it to be integrated into WEC at the same time that other Integrys subsidiaries are being integrated into WEC.

The proposed transaction is structured as a tax free spin-off, and must comply with certain federal tax law requirements. Thus, it will be accomplished in three steps: (1) WEPCo and WPS Corp will enter into Contribution Agreements whereby assets and obligations are transferred to NewCo1 and NewCo2; (2) all of the stock thereby created will be transferred to WEC; and (3) NewCo1 and NewCo2 will merge to form UMERL, which will be a wholly-owned subsidiary of WEC. According to Mr. Schubilske, this structure will result in a tax free spin-off, and avoid rate increases related to new deferred tax liabilities (DTLs).

With respect to assets, all of the Michigan electric distribution assets of WEPCo and WPS Corp, as well as the Michigan gas distribution assets of WPS Corp, will be transferred to UMERL at net book value, and the actual original historical plant in-service cost and accumulated depreciation that exists at the time of consummation of the proposed transaction will be transferred to UMERL. 2 Tr 83. Other transferred assets include any existing construction work in progress (CWIP), accounts receivable net of an allowance for uncollectibles, and regulatory assets that are specific to the Michigan jurisdiction and various Michigan receivables. Exhibit A-12. UMERL will be capitalized with 50% common equity and 50% debt (with all common equity owned by WEC), through an intercompany loan from WEC. Mr. Schubilske testifies that the proposed

transaction will not impair the capital structures of WEPCo or WPS Corp or their ability to access financial markets, and UMERC will start with appropriate capitalization and an established revenue stream. UMERC will assume state and local tax liabilities. The revenue requirement associated with the transferred assets will be moved to UMERC. 2 Tr 88.

The Joint Applicants request that all approvals, authority, consents, waivers, certificates, etc. previously granted to WEPCo and WPS Corp in connection with their provision of electric and natural gas service to Michigan customers be deemed applicable to UMERC. 2 Tr 86-87.

Mr. Schubilske explains that WEPCo will continue to provide service to the Mines until the time of the Mines' transfer to UMERC, and WEPCo requests to retain all approvals, authority, consents, waivers, and certificates necessary to serve the Mines until the transfer occurs in 2019 (or sooner if the parties agree). The Joint Applicants further request that all approvals, authority, consents, waivers, and certificates retained by WEPCo for its service to the Mines be deemed to apply to UMERC at the time of the Mines' transfer without the need for further Commission action. The Joint Applicants request approval for UMERC to be substituted as a party in all proceedings before the Commission involving WPS Corp's electric and natural gas service to Michigan customers, and for UMERC to be either substituted or added as a party to all Commission proceedings involving WEPCo's service in Michigan that affect UMERC.

The Joint Applicants propose to create a regulatory asset for decommissioning costs and the remaining book value of PIPP. PIPP currently consists of five coal-based generating units rated for 344 MW of net generating capacity. Though no specific timeframe for retirement of PIPP has been set, Mr. Schubilske states that "retirement and decommissioning of PIPP could begin within just a few years if a new generation plant is constructed in the UP." 2 Tr 89. He explains that the Joint Applicants request approval to allocate to UMERC a portion of this regulatory asset based on

a load ratio share of the WEPCo system as set in the last WEPCo rate case (Case No. U-16830) of 6.595%, and seek a ruling “that the PIPP costs allocated to UMEREC are a regulatory asset that UMEREC is entitled to fully recover in a future UMEREC general rate case or other proceeding.” *Id.* These costs will not be known until PIPP is actually retired at some unknown future date. WEPCo also proposes to transfer to UMEREC the \$266,052 in deferred system support resource (SSR) revenues associated with PIPP being held in regulatory liability account 254370.

Mr. Schubilske testifies that the proposed transaction will not have any adverse impact on rates and “will not result in any subsidization of unregulated activity.” 2 Tr 91. He states that all public filings made with PSCW and the Federal Energy Regulatory Commission (FERC) regarding the proposed transaction will be filed in this docket while the case is pending, as will orders.⁴ UMEREC will not seek to recover through rates in Michigan any transaction costs or acquisition premiums. Mr. Schubilske adds that no union contracts or charitable activities will be changed, and the proposed transaction will have no impact on market power or competition. There will be no labor force reductions.

MCL 460.57 provides that any regulated public utility in Michigan must maintain a principal office in this state, and “All books, accounts, papers, and records pertaining to the business and operation of the utility shall be kept in the office, unless the commission by special order or by rule or regulation may otherwise provide.” The Joint Applicants request a special order under MCL 460.57 to permit UMEREC to keep all books, accounts, papers, and records in Green Bay and Milwaukee, Wisconsin. Rate books will be maintained in Michigan, and other books, papers, etc. will be brought to Michigan at the request of the Commission for review. Mr. Schubilske

⁴ On October 19 and November 17, 2016, the Joint Applicants filed copies of numerous filings made with FERC.

indicates that this will achieve “economies of scale and scope,” by centralizing record maintenance. 2 Tr 96. A similar request was approved for WPS Corp in the February 9, 2006 order in Case No. U-14738.

Dennis M. Derricks, Director of Regulatory Affairs at WEC, testified regarding electric supply and rates, as well as energy optimization (EO) and renewable energy (RE) plans (EOPs and REPs). Mr. Derricks testifies that as of January 1, 2017, the geographic areas in which UMERC will be providing electric service will be known as the WEPCo Rate Zone and the WPSC Rate Zone, and UMERC will have two PPAs in place. The PPAs will provide slice of system benefits and costs for the two generation systems, similar to the allocation of generation costs in a retail rate case. Cost determination under the PPAs will be formula based, with one formula for capacity costs and another for energy costs. Exhibits A-14 and A-15. Mr. Derricks states that these PPAs are not intended to be long-term, but rather are a “bridge until a long-term UP energy solution is reached.” 2 Tr 118. They can be terminated on 12 months’ notice. The PPAs are wholesale transactions subject to FERC regulation and the formulas are based on FERC tariffs. Transmission charges will be based on the actual transmission, ancillary, and other market charges incurred by WPS Corp and WEPCo from the Midcontinent Independent System Operator, Inc. (MISO), and will be passed through to UMERC. UMERC will not be a registered MISO market participant. UMERC will receive a credit for retail interruptible load.

Mr. Derricks testifies that the formula rates that will be applied under the PPAs compare favorably to the slice of system cost method that has historically been used, and should result in rates that will be somewhat less than the rates produced by the most recent rate cases. 2 Tr 124. Since both PPAs will be associated with capacity charges in excess of six months, the Joint Applicants request approval under MCL 460.6j(13)(b). The currently approved base electric rates

will remain in effect in each zone until new base rates are approved in a future UMERL rate case (subject to self-implementation under MCL 460.6a).

UMERL requests to adopt the current WEPCo and WPS Corp power supply cost recovery (PSCR) clauses. Each zone will retain its current PSCR base rate, and UMERL planned to file a 2017 PSCR plan case on September 30, 2016, with separate factors for its two zones. (WEPCo filed an application in Case No. U-18148 on that date.) Mr. Derricks further explains that “Until UMERL files a Michigan retail rate case and implements new Power Supply Cost Recovery (‘PSCR’) base(s), it will exclude the generation-related ownership costs that are included in the capacity (depreciation, return, taxes, etc.) and energy (O&M [operations and maintenance]) rates for both the WPS Corp PPA and the WEPCo PPA for purposes of the PSCR factor calculations in its annual PSCR plan and reconciliation cases.” 2 Tr 126. Since WEPCo will continue providing service to the Mines, it will also file a 2017 PSCR plan case. Over- or undercollections for WPS Corp will be transferred to UMERL’s WPSC Rate Zone and in March 2017 UMERL will file a reconciliation case and will continue to use the return on equity (ROE) of 10.20% for overcollections. Over- or undercollections for WEPCo will be allocated between the non-Mine load served by UMERL and the Mines’ load, and the dollars allocated to the non-Mine load will be transferred to UMERL as a regulatory asset or liability. WEPCo will continue to use the ROE of 10.10% for overcollections.

Mr. Derricks explains that after January 1, 2017, some UMERL customers will continue to be served using electric distribution facilities belonging to WEPCo and WPS Corp, and some WEPCo and WPS Corp customers will be served by facilities newly transferred to UMERL. Thus, Exhibits A-19 through A-22 are unexecuted agreements for wholesale distribution service (AWDS) between the parties. These AWDSs will be filed with FERC.

The Joint Applicants request approval of UMERC Rate Book for Electric Service Volume 1, and WEPCo Rate Book for Electric Service Volume 4 (revised to reflect service only under Rate CpLC for the Mines). The current WEPCo and WPS Corp electric rate books would be combined into one volume for UMERC, which will also contain Rate CpLC for serving the Mines after expiration of the Mines' Special Contracts and the transfer of the Mines to UMERC.

An EOP for the WEPCo Rate Zone was approved in the October 27, 2015 order in Case No. U-17777, and an EOP for the WPSC Rate Zone was approved in the September 9, 2015 order in Case No. U-17776. Pursuant to MCL 460.1091(1), the Joint Applicants request approval of a 2017 electric EO payment to the Administrator for UMERC of \$1,307,301, which represents the sum of: (i) the \$394,499 approved for WPS Corp in Case No. U-17776; and (ii) \$912,802 for WEPCo, based on 2015 retail sales, excluding the 2015 retail sales from the Mines. Each rate zone would have its own specific EO surcharges. UMERC requests to adopt WEPCo's current EO charges for customers in the WEPCo Rate Zone, which would be subject to true up in UMERC's 2017 EO reconciliation case. WPS Corp's 2015 EO reconciliation case surcharges would be adopted by UMERC for the WPSC Rate Zone.

Mr. Derricks states that UMERC proposes to implement separate REPs for the two rate zones, by transferring to UMERC the REP approved in the August 14, 2015 order in Case No. U-17797 for the WPSC Rate Zone, and the REP approved in the February 11, 2016 order in Case No. U-17798 for the WEPCo Rate Zone. Banked renewable energy credits (RECs) for each contributing utility would also be transferred to UMERC. UMERC would utilize the cost recovery mechanisms that are provided under each current REP, including the transfer prices and surcharges. WEPCo is requesting that the Commission approve deferral of any unrecovered

incremental RE costs that it cannot recover from the Mines, and rule that this deferred amount would be a regulatory asset that WEPCo can transfer to UMERC.

David J. Kyto, Director – Rate Case Process in the State Regulatory Affairs Department of WEC, testified regarding gas supply and rates, and affiliated interest issues. He sponsored Exhibits A-2 and A-3, which are, respectively, a proposed asset management arrangement (AMA) and base contract between WPS Corp and UMERC for the management of day-to-day gas supply operations and the sale of natural gas by WPS Corp to UMERC for the use of UMERC's gas cost recovery (GCR) customers. Mr. Kyto explains that all gas customers are located in Menominee County, and WPS Corp has approximately 103.5 miles of gas main. Its last general gas rate case was approved in the June 7, 1983 order in Case No. U-7502, and gas distribution rates were reduced by the June 9, 1987 order in Case No. U-8694. He proposes that UMERC adopt WPS Corp's current gas tariff book.

WPS Corp's customers receive gas deliveries from ANR Pipeline Company's (ANR) Menominee No. 2 gate station. Mr. Kyto testifies that costs for the natural gas commodity, transportation, storage, and balancing services are currently allocated to WPS Corp's Michigan GCR customers using a monthly ratio of Michigan actual net GCR sales to total (Michigan plus Wisconsin) actual net GCR sales; and the cost ratio has historically been about 1.6%. When UMERC becomes a stand-alone utility, the Joint Applicants propose that WPS Corp permanently release 9,600 dekatherms (Dth) per day of ANR interstate pipeline transportation capacity to UMERC. 2 Tr 49. Mr. Kyto explains that this amount represents the pipeline capacity required to support UMERC's GCR customers' gas demand under winter peak day weather conditions, plus a 5% pipeline capacity reserve margin. He states that the release would comply with FERC rules and the terms and conditions of ANR's FERC Gas Tariff. UMERC would then temporarily

release that capacity back to WPS Corp for management under the AMA at the prevailing reservation rate. 2 Tr 50. WPS Corp would contract for commodity, deliver the gas, and perform balancing for UMEREC.

UMERC requests to adopt the current GCR clause of WPS Corp, and, at closing of the proposed transaction, any then-current GCR under- or overcollection would be cleared from WPS Corp's books and recorded on UMEREC's books as a regulatory asset or liability. UMEREC would operate according to the prevailing GCR plan. Mr. Kyto further explains that UMEREC proposes to adopt the current EOP and surcharges approved for WPS Corp for gas operations in the September 10, 2015 order in Case No. U-17776.

The Joint Applicants request that the deferral accounting treatment (for environmental assessment and remediation costs) currently in use with respect to WPS Corp's former manufactured gas plant (which has been fully remediated), which was approved in the January 6, 1999 order in Case No. U-11721, be transferred to UMEREC "in the event environmental requirements change in the future." 2 Tr 54.

Finally, Mr. Kyto testifies that UMEREC's name will be added to existing affiliated interest agreements, and that no additional Code of Conduct waivers are required at this time, and requests that any waivers granted to WPS Corp be "applied to UMEREC." 2 Tr 56.

Staff and Intervenor Testimony

The Attorney General

Sebastian Coppola, an independent business consultant, testified on behalf of the Attorney General. Mr. Coppola opined that the formation of UMEREC is premature, on grounds that the Joint Applicants have not shown "why forming UMEREC must be decided before more information

is known from the new power plant Certificate of Necessity ('CON') process and before the evaluation of all available power supply alternatives.” 2 Tr 241.

Mr. Coppola states that the cost of the new power plant that will be taken on by UMEREC is uncertain, and it has not been shown that UMEREC's ownership and operation of the new plant is in the best interests of UP customers. He further opines that UMEREC should not become responsible for the obligations under the 2016 Special Contract before the contract has been approved by the Commission. He states that the Joint Applicants should evaluate the alternatives of using transmission upgrades, or using WEPCo's hydro generation assets, as part of the options that are put before the Commission before the formation of UMEREC. He further recommends that the Commission require WEC to indemnify UMEREC from any tax, penalties, or other costs that could arise from the Internal Revenue Service's (IRS) review of the proposed transaction. Mr. Coppola asserts that the Commission should require the Joint Applicants to finance the new power plant project, rather than leaving it to UMEREC. With regard to affiliated interests, he proposes that the Commission impose a condition “that the [allocated corporate and affiliated company] costs allocated to UMEREC not increase by more than the overall increase in costs allocated to all affiliated companies prior to the formation of UMEREC.” 2 Tr 253.

Cloverland

Daniel M. Dasho, President and Chief Executive Officer of Cloverland, testifies that the proposed transaction only addresses the short term, and does not provide a long term solution to the energy crisis in the UP. Mr. Dasho states:

Specifically, the proposed transaction, among other things (1) does not address the likely result that Cloverland and other stakeholders will (a) have to pay for the operation and capital outlays associated with the plant as another MISO SSR unit and (b) be required to buy the excess power from the new plant as Michigan utilities and wholesale customers of WEC, and (2) forces a “solution” that has not been shown to be the least cost or best approach for the Upper Peninsula, and has

done so without any meaningful involvement by all stakeholders including Cloverland. Consequently, I propose that should the Commission approve the proposed transaction it should do so only with conditions that assure a long term solution to the energy needs in the Upper Peninsula. Those conditions include requiring UMERL to agree to participate in a comprehensive stakeholder planning initiative lead by the Michigan Agency for Energy to determine the least cost option for the Upper Peninsula before UMERL files a request for a certificate of need concerning its planned natural gas generating facilities. I am concerned that the ARSA's intent of having a natural gas plant constructed before an integrated resource plan has been completed otherwise puts having a Michigan only regulated utility ahead of planning for the Upper Peninsula.

2 Tr 32. Mr. Dasho explains that Cloverland has a wholesale power agreement with WEC, and that WEC consistently has favored Wisconsin customers over Michigan customers. He asserts that by leaving Michigan, WEC may become more Wisconsin-centered in its choices without any recourse for Michigan jurisdictional customers. He is concerned that Cloverland will be forced to buy excess power from the new plant, and that the lack of integrated planning for the UP will result in a poor solution. Mr. Dasho requests that the Commission add conditions to the transaction that ensure all stakeholders have input into planning for the UP's energy future.

Tilden

James M. Kochevar, P.E., General Manager of Cliffs Natural Resources Inc. (Cliffs) (the owner of the Mines), testified about the 2016 Special Contract for electric service to Tilden, and how the agreement relates to UMERL. In the non-confidential part of his testimony, Mr. Kochevar explains that under the 2016 Special Contract, "WEC through UMERL will construct, own and operate new generation that will provide power supply to Tilden for a 20-year term." 2 Tr 320. Tilden supports the application.

The Staff

Robert F. Nichols II, CPA, Manager of the Revenue Requirements Section of the Financial Analysis and Audit Division (FAAD) of the Commission, testifies that the Staff has concluded that

the proposed transaction will satisfy the requirements of MCL 460.6q(7)(a) in that it will not have an adverse impact on the rates paid by customers. He states that UMERL customers will continue to be billed at the existing tariff base rates, and that the formation of UMERL will not increase the existing revenue requirement. He further opines that the proposed transaction will satisfy the requirements of MCL 460.6q(7)(d) in that it will not impair the jurisdictional regulated utility's ability to raise necessary capital or maintain a reasonable capital structure.

Catherine E. Cole, an assistant in the Operations and Wholesale Markets Division of the Commission,⁵ testified regarding the Staff's conclusions on two other required elements and on the long term benefits and risks to the reliability of the UP electric grid associated with the proposed transaction. She sponsored two confidential exhibits – Exhibit S-2.0 is a copy of the 2016 Special Contract between WEC and Tilden, and Exhibit S-2.1 is a 27-page confidential response to discovery propounded by the Staff – and some of her testimony is confidential as well.

Regarding the requirements of MCL 460.6q(7)(b), she testifies that “With the exception of an unknown but possibly near-term retirement date for PIPP, there is no evidence that the proposed actions would impact or otherwise change the provision of safe, reliable and adequate energy service from [what] exists today.” 2 Tr 186. Ms. Cole opines that a near-term retirement of PIPP, prior to the addition of new or upgraded infrastructure, could adversely impact the provision of safe, reliable, and adequate energy service in the UP. She explains that the 2016 Special Contract includes a description of proposed new electric generation facilities in the UP, and that this new generation is significantly smaller than the existing PIPP asset, thus making it unclear whether the new generation will allow for the retirement of PIPP without the need for additional infrastructure

⁵ Ms. Cole's job title has changed since her testimony was filed. She is now the Manager of the Resource Adequacy and Retail Choice Section of FAAD.

in the UP. 2 Tr 187-188. Ms. Cole notes the Joint Applicants' expectation that PIPP will be able to close once the new generation is available, but states, "Staff cautions that additional steps need to be taken by the Applicants, specifically results from the Applicant's request to MISO for a generation interconnection agreement as well as an Attachment Y application to retire PIPP simultaneous with the commercial operation of the proposed new electric generation, before that question can be answered without speculation." 2 Tr 188.

Ms. Cole testifies that the Staff recommends that PIPP cease operations simultaneous with the commercial operation of the new power plant, and that "the generation interconnection study for the proposed new generation includes the simultaneous retirement of PIPP in order to avoid any additional unnecessary infrastructure upgrades unless necessary for the reliability of service in the area." 2 Tr 189. She states that the Staff does not currently have an opinion regarding the reasonableness and prudence of the proposed new electric generation. In sum, Ms. Cole testifies that "Staff's opinion is that the near-term retirement of PIPP has already been a concern as evidenced by its previous designation by MISO as an SSR unit and that the proposed creation of UMERL in and of itself would not have an adverse impact on the provision of safe, reliable and adequate energy service in this state." 2 Tr 190.

Ms. Cole goes on to address the requirements of MCL 460.6q(7)(e), which provides that the proposed transaction should not be inconsistent with public policy and interest. She notes that in the April 23, 2015 order in Case No. U-17682, the Commission found that approval of the ARSA was in the public interest, and that the ARSA provides for the creation of a Michigan-only utility if it is reasonable and prudent to do so. Ms. Cole opines that the 2016 Special Contract provides a level of certainty regarding a future revenue stream for the new generation, and states that the Staff expects the utility to file an application for approval of the 2016 Special Contract at some point.

She testifies that the Staff concludes that the proposed transaction is consistent with public policy and interest.

Regarding benefits, Ms. Cole states that the formation of UMEREC would result in the regulated utility having to seek approvals from only one jurisdiction rather than two, which could streamline the process to develop replacement generation for PIPP. Turning to risks, she states that the greatest risk comes from the fact that the new proposed generation solution has not yet been studied or approved by MISO, and MISO might conclude that additional infrastructure upgrades are needed; but she notes that this risk exists with or without the formation of UMEREC. Finally, Ms. Cole states that the Staff acknowledges that the creation of UMEREC at this time will help to facilitate a permanent solution to the long term generation problem. 2 Tr 195.

Julie K. Baldwin, Manager of the Renewable Energy Section of the Electric Reliability Division of the Commission, testified regarding the Joint Applicants' REP proposals. She recommends disapproval of their request to transfer the two existing REPs to UMEREC, stating "The creation of UMEREC and its separation from the Mines' retail load through 2019 and potential changes in the renewable energy generation supply mix that could result from a long-term UP energy solution create a scenario that is inconsistent with the REPs currently approved for WPSC and WEPCo." 2 Tr 220-221. She recommends that UMEREC file REP applications within 90 days of the date of this order for the WPSC Rate Zone and the WEPCo Rate Zone. Ms. Baldwin states that the requests related to RECs and the creation of a regulatory asset should be addressed in the new REP proceedings.

Rebuttal Testimony

Mr. Coppola filed rebuttal to the Staff, arguing that it makes no sense for the Staff to conclude that the proposed transaction will not impact the provision of safe, reliable, and adequate energy

while also acknowledging that the proposed new generation is significantly smaller than PIPP and that generation interconnection could be problematic. He notes that the Staff presumes the new plant will be built but cannot opine on whether it should be built. He further argues that it is uncertain whether the 2016 Special Contract will provide the appropriate level of revenue, and this will not be known until the CON process. Mr. Coppola again argues that the application is premature, and that the “formation of UMERC in effect precludes the evaluation of other options that must be considered.” 2 Tr 272. He also characterizes the Staff’s testimony as dealing only with the short term, and opines that the long term effect on rates is unknown. He urges the Commission to delay any decision until the CON process is complete, the 2016 Special Contract is approved, and the necessary transmission studies are completed by MISO.

Mr. Kyto filed rebuttal to the Attorney General, stating that the formation of UMERC will not result in any significant change in corporate or affiliate cost assignments, because under the affiliated interest agreements costs are directly assigned to the entity causing the cost. He disagrees with the condition recommended by Mr. Coppola, stating that the condition does not reflect how affiliated costs are actually shared or incurred.

Mr. Schubilske filed rebuttal to the Attorney General, arguing that the appropriate docket for investigating the financing of the new power plant is the planned CON docket. He testifies that the Joint Applicants expect UMERC to finance about half the cost of the new plant with external debt, and WEC to finance the other half through an equity contribution. He states that UMERC will have almost \$340 million in assets and equity. Finally, he testifies that WEC would agree to indemnify UMERC and its customers against potential tax effects resulting from a later determination by the IRS of taxability.

Mr. Derricks filed rebuttal to the Attorney General, the Staff, and Cloverland. Mr. Derricks states that the application is not premature, because January 1, 2017 marks the beginning of a new PSCR year, EO year, and RE year. He also notes that the WEPCo hydroelectric facilities will be a source of power to UMERL under the WEPCo PPA.

Mr. Derricks disagrees with Ms. Baldwin, stating that delaying the RE issues until after this case is complete leaves the Joint Applicants with too much uncertainty regarding recovery of RE costs.

Mr. Derricks notes that the question of when and how to retire PIPP cannot be resolved in this case, and must be dealt with through the MISO plant retirement process after the CON is approved.

In rebuttal to Mr. Dasho, Mr. Derricks testifies that the ARSA does not require a stakeholder planning initiative prior to the filing of the CON application, and that WEC has met its commitments under the ARSA by filing this application and entering into the 2016 Special Contract with Tilden. He states that UMERL will file the CON application in January 2017 or sooner. Finally, Mr. Derricks testifies that the wholesale arrangement with Cloverland is with WEPCo, not WEC, and is subject to the exclusive jurisdiction of the FERC.

The Settlement Agreement

In the settlement agreement, attached hereto as Attachment 1, the parties⁶ agree that the proposed transaction satisfies the requirements of MCL 460.6q(7) because it: (1) will not have an adverse impact on the rates of customers transferred to UMERL; (2) will not have an adverse impact on the provision of safe, reliable, and adequate energy service in this state; (3) will not

⁶ The settlement agreement was also signed by WEC.

result in the subsidization of a nonregulated entity through the rates paid by UMERC's customers;

(4) will not significantly impair UMERC's ability to raise capital or to maintain a reasonable

capital structure; and (5) is not otherwise inconsistent with public policy and interest. The parties

recommend that the Commission approve the following:

WEPCo and WPS Corp shall be authorized to transfer to UMERC, as applicable: (i) all of WEPCo's Michigan jurisdictional distribution substations, distribution lines, and other distribution assets (as more fully described in the June 14, 2016 filing including those identified in the Joint Applicants' response to discovery request 05-Staff-02) used in providing retail electric service in Michigan, including upon consummation of the Mines Transfer those facilities required to provide electric service to the Mines; (ii) all of WPS Corp's Michigan jurisdictional electric distribution substations, distribution lines, natural gas distribution assets and other distribution assets (as more fully described in the June 14, 2016 filing including those identified in the Joint Applicants' response to discovery request 05-Staff-02 and supplemental response to discovery request 05-Staff-02) used in providing retail electric and natural gas service in Michigan, and a Manufactured Gas Plant site located in Menominee County, Michigan; and (iii) all of WEPCo's Michigan retail full requirements and retail access service customers (except initially the Mines) and all of WPS Corp's Michigan retail full requirements electric and gas customers, retail access electric customers, and gas transportation customers. WEPCo and WPS Corp will form UMERC as described in the June 14, 2016 filing. The signatories to this Settlement Agreement shall recommend these transfers be authorized as necessary to enable UMERC to commence providing service to the transferred customers (except for the Mines) on January 1, 2017.

Attachment 1, pp. 3-4.

The parties agree that WEC, WEPCo, and WPS Corp shall:

(1) In the event of: (i) an involuntary termination of the Retail Large Curtailable Special Contract between WEC and Tilden dated August 12, 2016 ("2016 Tilden Special Contract"), appended as Attachment A hereto; and (ii) Tilden is not able to pay, per a bankruptcy ruling, then WEC will be responsible for and protect UMERC's other ratepayers from the cost associated with Tilden's portion of the capital investment, depreciation expense, and return on investment, taxes and fixed operating costs in the new generator units that would be the subject of UMERC's planned Certificate of Necessity ("CON") proceeding, so that such costs are not passed on to UMERC's ratepayers.

(2) So long as the Proposed Transaction to create UMERC is approved as specified in the June 14, 2016 filing, indemnify UMERC and its customers for potential tax effects

resulting from a later determination by the Internal Revenue Service that the Proposed Transaction is a taxable transaction.

(3) Commit to having UMEREC provide details on the financing of the new proposed generation facilities units in the CON application and as applicable, provide any options that may be reasonably available, including options involving WEC to mitigate the cost of debt financing.

(4) Allocate to UMEREC a portion of the remaining book value when the Presque Isle Power Plant (“PIPP”) is retired and other associated retirement costs (including, but not limited to, decommissioning costs) of PIPP based on a load ratio share of 6.595% of the WEPCo system. These amounts allocated by WEPCo to UMEREC shall be a regulatory asset that UMEREC shall be entitled to fully recover in a future UMEREC general rate case or other proceeding. Tilden’s portion of the undepreciated remaining book value of PIPP when it is retired and associated retirement and decommissioning costs will be allocated consistent with Section 2.1.10.2 of the 2016 Tilden Special Contract. UMEREC will not seek to collect the Tilden portion of these amounts through a non-bypassable charge to non-Tilden customers.

(5) Commit to have UMEREC submit, for MPSC consideration as part of the CON application case, fuel and/or energy cost hedging options regarding the UMEREC non-Mines load.

(6) Commit to have UMEREC file a Renewable Energy (“RE”) Plan, and WEPCo shall file a revised RE Plan, within 90 days of a Commission order approving this Settlement Agreement.

Attachment 1, pp. 4-5.

The parties agree that WEPCo will transfer the Mines as customers to UMEREC after termination of the Mines’ Special Contracts, without the need for further Commission action, and that UMEREC will provide notice to the Commission within 30 days after the Mines’ transfer.

The parties to the settlement agreement also agree that UMEREC shall adopt WEPCo’s current Michigan electric base rates for purposes of providing service to former WEPCo Michigan customers in UMEREC’s WEPCo Rate Zone, and shall adopt WPS Corp’s current Michigan electric base rates (and will implement previously-approved phased-in rate increases authorized in Case No. U-17669) and current Michigan natural gas base rates for purposes of providing service to former WPS Corp Michigan customers in UMEREC’s WPS Corp Rate Zone. Those rates will

apply at the time the proposed transaction is consummated, and until UMERC receives approval of new base rates for electric and/or gas service pursuant to a Commission order. The settlement agreement provides that the capacity charges in the WEPCo PPA and the WPS Corp PPA should be approved pursuant to MCL 460.6j(13)(b).

The settlement agreement provides that UMERC shall adopt the PSCR clauses of WEPCo and WPS Corp, pursuant to which UMERC will recover PSCR costs via separate PSCR factors for the WEPCo Rate Zone and the WPS Corp Rate Zone, subject to the Commission's approval in annual PSCR plan and reconciliation cases. In addition, UMERC shall file a reconciliation of the 2016 WPS Corp PSCR costs and revenues, and the 2016 over- or underrecovery shall be transferred to UMERC's WPS Corp Rate Zone to be rolled into the beginning balance of UMERC's 2017 PSCR reconciliation for the WPS Corp Rate Zone. For WEPCo's 2016 PSCR reconciliation, UMERC and WEPCo shall file a reconciliation of 2016 WEPCo PSCR costs and revenues, and the 2016 over- or underrecovery shall be allocated between the WEPCo non-Mine load that will be served by UMERC, and the Mines' load, on a proportional MWh basis. The settlement agreement further provides that, for the purpose of serving the Mines, WEPCo will continue to have a PSCR clause.

The settlement agreement provides that UMERC shall adopt WPS Corp's GCR clause for natural gas service in the WPS Corp Rate Zone. UMERC shall file to reconcile WPS Corp's GCR costs and revenues for the 2015-16 GCR reconciliation period and any GCR under- or overrecovery shall be transferred to UMERC as a regulatory asset or liability, as applicable, and UMERC shall roll-in the GCR under- or overrecovery as the beginning balance of the 2016-17 GCR reconciliation.

The settlement agreement further provides that all approvals, authority, consents, waivers, and certificates previously granted to WEPCo and WPS Corp in connection with their provision of

electric and natural gas service to Michigan customers shall apply to UMEREC, including, but not limited to, accounting approvals, depreciation rates, and regulatory assets and liabilities. The settlement agreement provides that as WEPCo will continue to provide service to one or both Mines until the time of the Mines' transfer, WEPCo shall retain all approvals, authority, consents, waivers, and certificates necessary to serve the Mines until the transfer occurs; at which time they will transfer to UMEREC without the need for further Commission action, except for Commission required approvals related to RE and EO.

The parties to the settlement agreement also agree that UMEREC shall file a Rate Book for Electric Service and a Rate Book for Natural Gas Service substantially similar to those admitted as Exhibits A-23 and A-1, updated as necessary to include any new rates, charges, or other provisions approved for WEPCo or WPS Corp subsequent to the filing of the application.

The settlement agreement provides that UMEREC shall adopt the following EO plan:

(1) For natural gas customers in the WPS Corp Rate Zone, UMEREC shall adopt and implement the natural gas EO plan approved in Case No. U-17776 for WPS Corp's Michigan gas operations, which includes a 2017 payment to the Administrator of \$114,894, and adopt the EO surcharges approved in Case No. U-18018 for WPS Corp's natural gas service.

(2) For electric service customers, UMEREC shall make a 2017 EO payment to the Administrator in the amount of \$1,307,301, based on the sum of: (i) the \$394,499 approved for WPS Corp for 2017 in Case No. U-17776; and (ii) the \$912,802 approved for UMEREC for 2017 in Case No. U-18019. EO surcharges for the WEPCo Rate Zone shall be those approved for UMEREC's WEPCo Rate Zone in Case No. U-18019, and the EO surcharges for the WPS Corp Rate Zone shall be those approved in Case No. U-18018.

Attachment 1, p. 10.

Finally, the settlement agreement provides that no additional waivers are required under the Code of Conduct and the Affiliate Transaction Guidelines with respect to the affiliated interest agreements described in the application and supporting testimony; and that upon consummation of

the proposed transaction, UMERB shall be entitled to be added or substituted as a party in all proceedings before the Commission involving WPS Corp's electric and natural gas service to Michigan customers, and in all Commission proceedings involving WEPCo's electric service to Michigan customers, in which WEPCo and/or WPS Corp are parties. UMERB shall be entitled to keep its books and records outside of Michigan.

The Briefs

MCL 460.6q(1) prohibits a jurisdictional regulated utility from selling, assigning, transferring or encumbering its assets without first obtaining Commission approval. In determining whether to grant the requested approval, the Commission is guided by the factors listed in MCL 460.6q(7):

- (a) Whether the proposed action would have an adverse impact on the rates of the customers affected by the [proposed transaction].
- (b) Whether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service in this state.
- (c) Whether the action will result in the subsidization of a non-regulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.
- (d) Whether the action will significantly impair the jurisdictional regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.
- (e) Whether the action is otherwise inconsistent with public policy and interest.

The statute further provides the Commission with the ability to impose reasonable terms and conditions on the proposed transaction to protect either the utility or its customers. The utility may reject any terms and conditions imposed by the Commission and choose not to proceed with the transaction. MCL 460.6q(8) and (9). Additionally, Mich Admin Code, R 792.10431(5) (Rule 431(5)) provides that the Commission may approve a settlement agreement where, as here, all parties have agreed, and:

(b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.

(c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and, if the settlement is contested, is supported by substantial evidence on the record as a whole.

In its November 7 order, the Commission expressed concern regarding its ability to find that the settlement agreement satisfied the elements required by MCL 460.6q(7)(a) and (b), and requested information addressing nine issues described in the order. Given the time constraints imposed by the statute, the Commission also requested briefs in support of the application. All the parties to the case signed the settlement agreement, and all the parties responded with initial briefs.

Verso, Tilden, and the Attorney General filed initial briefs in support of the settlement agreement. These intervenors point out that the Joint Applicants are in the best position to answer the Commission's concerns. Verso indicates that it accepted the 6.595% load share in the spirit of compromise, and that "In order to recover decommissioning and retirement costs, it is Verso's understanding the Commission would be reviewing such costs prior to inclusion in the rate base." Verso's initial brief, p. 4. Tilden argues that the settlement agreement meets the requirements of Rule 431(5) because the public interest was adequately represented by the parties, who are sophisticated participants with varying interests; and the settlement is in the public interest, is fair and reasonable, and is supported by the record. Tilden notes that the Commission may impose conditions on the proposed transaction, and the Joint Applicants may choose to reject them. In his reply brief, the Attorney General argues that the initial briefs of the Joint Applicants and the Staff demonstrate the reasonableness of the settlement agreement.

The Joint Applicants and the Staff responded to the individual areas of concern noted in the November 7 order (and listed below) as follows.

- 1) Neither the record nor the settlement agreement provide information or commitments regarding the quality or status of the physical systems that are being transferred, nor do they discuss what reliability investments might be required in the future. How can the Commission be assured that UMERC is committed to making necessary investments and expenditures in the short and long term to maintain distribution reliability, safety, and customer service while ensuring rates are affordable? The Commission expects UMERC to provide its capital and operations plan for review by the Staff on an ongoing basis.

The Joint Applicants respond by stating that the creation of UMERC does not change any existing commitment to make all necessary short- and long-term investments to maintain reliability, safety, and customer service, and that UMERC will be subject to the same regulations, reporting requirements, reliability standards, and Commission orders as all other regulated Michigan utilities. They state that the “transferring utilities’ current base rates also reflect the age and condition of the electric distribution system in the UP with respect to rate base, depreciation and operations and maintenance costs.” Joint Applicants’ initial brief, p. 8. Finally, they state “UMERC commits to making a capital and operation plan available to the Commission Staff annually, or on a different basis if preferred by the Commission.” *Id.* The Staff states that the “Joint Applicants have made a number of commitments that ensure rates will be stable until the new RICE [reciprocating internal combustion engine] units are in service.” Staff’s initial brief, p. 10.

- 2) Please address WEC’s plans from a management, communications, customer relations, and regulatory standpoint to ensure WEC management is responsive to the needs of Michigan customers and other stakeholders.

In response, UMERC commits to provide the same level of management, communications, customers relations, and regulatory services as are required of all regulated Michigan utilities, and argues that it should not be held to a different standard. The Joint Applicants argue that the purpose of forming UMERC is to comply with the ARSA, and its formation will not change how

service is currently delivered to customers. They invite the Commission to measure future performance through the development of service metrics for all Michigan utilities.

- 3) If service is inadequate or too costly, what options are available for UMERC to pursue alternatives and terminate service agreements and purchase power contracts with WEC? What is the ability and process for the Commission, the Staff, and stakeholders to review inputs to the PPA between WEC and UMERC outside of a complaint proceeding at FERC?

The Joint Applicants point out that these are the same costs that the Commission has reviewed in rate cases, and argue that there is no reason to think that UMERC's service will be inadequate. They contend that base rates and PSCR/GCR costs remain the same, and the FERC formula rates have been found just and reasonable. They note that the PPAs will provide slice of system benefits and costs in the same way that generation costs are currently allocated, which is the method that the Commission has approved for many years; and that the Commission will retain complete oversight over UMERC's future costs of service. The Joint Applicants note that the PPAs can be terminated with 12 months' notice, or at any time by mutual agreement of the contracting parties. The Staff points out that the Joint Applicants have committed not to change the terms of the PPAs until the end of 2019 (discussed below), which is the target in-service date for the new RICE units.

- 4) The settlement agreement does not indicate whether the costs to be included in the regulatory asset for the remaining book value and decommissioning costs of PIPP will be reviewed by the Commission prior to inclusion and ultimate recovery from Michigan ratepayers. Is such a review of historical and any incremental rate base amounts, depreciation, and any return contemplated by the parties to the settlement? If so, how can the Commission ensure access to necessary information to conduct such a review, including books, records, and inspections, given that PIPP will not be a jurisdictional asset of UMERC?

The Joint Applicants respond that the regulatory asset relating to the future retirement of PIPP will be recovered after review by the Commission in a future UMERC rate case or other proceeding. The Joint Applicants commit to ensure that the Staff has access to WEPCo's books

and records pertaining to PIPP and the regulatory asset. The Staff agrees that the Commission will have the opportunity to review efforts to recover the PIPP regulatory asset.

- 5) The settlement agreement appears to address issues associated with either the involuntary or voluntary termination of the 2016 Special Contract between WEC and Tilden in only summary fashion. The Commission is concerned that terminations of the contract resulting from scenarios other than bankruptcy have not been explained fully.

The Joint Applicants state that UMERB will request approval of the 2016 Special Contract in UMERB's CON proceeding, and rate treatment will be addressed there. The Joint Applicants assert that non-Mine customers will not be impacted by the termination of that contract or non-payment by Tilden of any amounts required under that contract, because voluntary and non-voluntary termination are both addressed. The Staff also indicates that non-Mine customers are protected.

- 6) Renewable energy costs emanating from Wisconsin are currently embedded in the tariffs that would be adopted by UMERB. They would also be embedded in the wholesale tariffs set by FERC that govern the formula used for setting prices under the PPAs. How will the new REP proceedings filed by UMERB for the two zones address this problem?

The Joint Applicants point out that for PSCR purposes UMERB will exclude generation related ownership costs, thus the cost of RE recovered in UMERB's base rates will not be double-recovered as PSCR costs as well. They state that UMERB will likely adopt the current annual REC portfolios of WEPCo and WPS Corp. The Staff "recommends that the Commission wait until UMERB files a REP to rule on these issues." Staff's initial brief, p. 15.

- 7) There are numerous service agreements, such as the AMA, existing as part of the transaction in order to keep current service in place. How can the Commission be assured that cost allocations under those agreements will not change in the future to the detriment of Michigan ratepayers? Detail all filings made to FERC regarding cost allocations.

The Joint Applicants assert that under the PPAs, UMERB will pay each respective utility's FERC formula rate; and that "the Joint Applicant commit to not change the terms of PPAs until the end of 2019." Joint Applicants' initial brief, p. 26. They further assert that the AWDs and other agreements are designed to avoid the detrimental allocations that the Commission refers to.

- 8) The settlement agreement adopts the load ratio share allocation applicable to decommissioning costs and the unrecovered book value for PIPP that was proposed in the application. However, that allocator (6.595%) was set at a time when the Empire Mine was operating. The date of decommissioning of PIPP is unknown, but could likely generate a different allocation factor. This allocator is important because it determines how much customers in Michigan will pay for this retired power plant on a going-forward basis. Given that context, what makes the proposed factor appropriate and equitable for Michigan ratepayers compared to other methodologies such as determining the actual load ratio share at the time of retirement or an average from 2016 until the date of retirement?

The Joint Applicants note that the parties agreed to the 6.595% allocation factor and argue that analysis shows that this is near the low point of that allocation historically. They contend that use of a historical average would have produced a higher percentage.

- 9) UMERB will be located in the American Transmission Company (ATC) Transmission Pricing Zone and Local Resource Zone 2, as a single pricing and resource zone. Currently, the ATC Transmission Pricing Zone includes a portion of Wisconsin, and baseline reliability projects in this zone are subject to cost sharing between Michigan and Wisconsin. Planning reserve requirements and related capacity issues are also determined for Zone 2 based on the combined capacity, load, and transmission capability of eastern Wisconsin and Michigan's UP. With the approval of UMERB, how can the Commission be assured that costs currently shared would not ultimately be shifted to Michigan ratepayers?

In response, the Joint Applicants "commit to neither seek nor support changes before FERC that will shift to UMERB customers costs that are currently shared between Wisconsin and Michigan, including any proposed allocations on the basis of local balancing authority." Joint Applicants' initial brief, p. 30. The Staff points out that, if such changes are requested by another entity, the Joint Applicants do not commit to oppose such changes before FERC. However, the Staff opines that the shared costs are more likely to be shifted to Michigan if UMERB is not

created because, in that scenario, the parties might pursue a more costly transmission solution. The Staff believes that a solution based on transmission would be more likely to end cost sharing in Zone 2 than the creation of UMEREC (a generation solution) would be.

Discussion

After reviewing the record evidence in this case and the settlement agreement attached hereto as Attachment 1, the Commission finds that the settlement agreement should be approved. The Commission continues to find that the public interest is served by fulfilling the goals of the ARSA and pursuing a generation solution for the UP. The Commission appreciates the efforts of the parties in reaching this agreement. The Commission finds that the settlement ensures that rates and the terms and conditions of service, as well as the availability, reliability, and safety of the power that is provided, remain wholly unchanged for current WEPCo and WPS Corp customers who become UMEREC customers. The transition to UMEREC for ratepayers will be as seamless as possible. The Commission observes that the personnel currently responsible for management, communications, regulatory compliance, and customer relations will not change. Moreover, the PPAs will offer reasonable and affordable rates that may indeed, as the record indicates, be slightly lower than recent rates. The Joint Applicants' commitment to not change the terms of the PPAs for three years or seek changes to cost allocations before FERC helps ensure that rates will remain reasonable; and, of course, any change to UMEREC's rates will be subject to review by the Commission. The Commission is also persuaded that the settlement protects ratepayers from any rate impact associated with the termination of Tilden as a customer, whether voluntary or involuntary. The settlement represents the beginning of the process of ensuring that reliable and affordable power is available over the long term in the UP. All parties will be able to participate in the CON case, which will provide a forum for more intensive review of the generation solution.

Approval of the settlement agreement constitutes approval of the proposed transaction, which the Commission makes conditional on the additional commitments made by the Joint Applicants in their initial brief. MCL 460.6q(9). Thus, approval of the proposed transaction is conditioned upon the following: (1) UMEREC shall provide the Staff with a capital and operations plan annually, to be submitted to the Staff on June 1, 2017 and every year on June 1 thereafter; (2) the Joint Applicants shall ensure that the Commission has access to all of WEPCo's books and records pertaining to PIPP at the point in time when the remaining book value and decommissioning costs of PIPP are reviewed by the Commission prior to inclusion and ultimate recovery from Michigan ratepayers; (3) the Joint Applicants shall not seek to change any of the terms of the PPAs until January 1, 2020; and (4) the Joint Applicants shall neither seek nor support changes before FERC that will shift any costs to UMEREC customers that are currently shared between Wisconsin and Michigan. Since the conditions were offered by the Joint Applicants themselves, the Commission assumes that the proposed transaction will go forward with these conditions and that no party will seek rehearing or appeal.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Attachment 1, is approved with the conditions described in this order. Due to its voluminous nature, Attachment A to the settlement agreement is not physically attached to this order and is available electronically on the Commission's website.

B. The request for approval of capacity charges associated with the Wisconsin Electric Power Company and Wisconsin Public Service Corporation power purchase agreements pursuant to MCL 460.6j(13)(b), is granted.

C. Within 30 days of the date of this order, Upper Michigan Energy Resources Corporation shall file a Rate Book for Electric Service and a Rate Book for Natural Gas Service in accordance with the settlement agreement.

D. Within 30 days of the date of this order, Wisconsin Electric Power Company shall file a revised Rate Book for Electric Service in accordance with the settlement agreement.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of December 9, 2016.

Kavita Kale, Executive Secretary

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

* * * * *

In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
WISCONSIN PUBLIC SERVICE CORPORATION,)	
and UPPER MICHIGAN ENERGY RESOURCES)	
CORPORATION for approval, pursuant to MCL 460.6q,)	Case No. U-18061
for the transfer of control of Wisconsin Electric)	
Power Company's Michigan electric distribution)	
assets and Wisconsin Public Service Corporation's)	
Michigan electric and natural gas distribution assets to)	
Upper Michigan Energy Resources Corporation,)	
<u>and related approvals.</u>)	

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Michigan Administrative Hearing System's Administrative Hearing Rules, R 792.10431, settlement discussions were conducted among Wisconsin Electric Power Company ("WEPCo"), Wisconsin Public Service Corporation ("WPS Corp") (collectively with Upper Michigan Energy Resources Corporation ("UMERC"), the "Joint Applicants"), the Michigan Public Service Commission ("MPSC" or the "Commission") Staff ("Staff"), Attorney General Bill Schuette ("AG"), Tilden Mining Company L.C. ("Tilden"), Cloverland Electric Cooperative, Inc. ("Cloverland"), Fibrek, and Verso Corp. ("Verso"). As a result of such settlement discussions the signatories to this Settlement Agreement agree as follows:

1. On June 14, 2016, the Joint Applicants, pursuant to, but not limited to, MCL 460.6q, and related MPSC rules and regulations, including, but not limited to, the Commission's Rules Governing Mergers and Acquisitions, Mich Admin Code, R 460.301 to 460.303, filed a Joint Application requesting that the Commission grant all required and requested approvals,

within 180 days of the June 14, 2016 filing, in connection with: (i) the establishment of UMER, a Michigan jurisdictional regulated utility to provide retail service to the (former) Michigan electric customers of WEPCo (except, initially, Tilden and the Empire Iron Mining Company L.C. (“Empire”) (collectively the “Mines”) and the (former) electric and natural gas customers of WPS Corp; and (ii) the transfer of WEPCo’s Michigan electric distribution assets, and WPS Corp’s Michigan electric and natural gas distribution assets (as more fully described in the June 14, 2016 filing) to UMER (collectively, the “Proposed Transaction”).

2. Pursuant to due notice, a prehearing conference was held on July 8, 2016, before Administrative Law Judge (“ALJ”) Martin D. Snider. At the prehearing conference, the AG’s Notice of Intervention was granted, and the ALJ granted the Petitions for Leave to Intervene filed by Tilden, Fibrek, and Cloverland. A case schedule was also established, as set forth in a Scheduling Memo filed by the ALJ on July 8, 2016. Verso’s Petition to Intervene Out-of-Time was subsequently granted upon stipulation of the parties.

3. On July 13, 2016, the ALJ filed an Interoffice Communication in this docket revising the case schedule to remove the target date for the Proposal for Decision (“PFD”) and the due dates for Exceptions to PFD and Replies to Exceptions, to reflect that the Commission would read the record in this case.

4. On September 9, 2016, the Staff, AG, Tilden and Cloverland filed direct cases, and on September 20, 2016, the Joint Applicants and AG filed rebuttal.

5. Subsequent to the filings made on September 9 and 20, 2016, the parties negotiated this Settlement Agreement. The signatories agree that the Proposed Transaction satisfies the requirements of MCL 460.6q(7) because it: 1) will not have an adverse impact on the rates of the customers affected by the transaction, 2) will not have an adverse impact on the

provision of safe, reliable, and adequate energy service in this state, 3) will not result in the subsidization of a nonregulated activity through the rates paid by UMERC's customers, 4) will not significantly impair UMERC's ability to raise necessary capital or to maintain a reasonable capital structure, and 5) is not otherwise inconsistent with public policy and interest. The signatories further agree that the Proposed Transaction should be approved, and recommend that the Commission issue an order approving the following:

a. WEPCo and WPS Corp shall be authorized to transfer to UMERC, as applicable: (i) all of WEPCo's Michigan jurisdictional distribution substations, distribution lines, and other distribution assets (as more fully described in the June 14, 2016 filing including those identified in the Joint Applicants' response to discovery request 05-Staff-02) used in providing retail electric service in Michigan, including upon consummation of the Mines Transfer those facilities required to provide electric service to the Mines; (ii) all of WPS Corp's Michigan jurisdictional electric distribution substations, distribution lines, natural gas distribution assets and other distribution assets (as more fully described in the June 14, 2016 filing including those identified in the Joint Applicants' response to discovery request 05-Staff-02 and supplemental response to discovery request 05-Staff-02) used in providing retail electric and natural gas service in Michigan, and a Manufactured Gas Plant site located in Menominee County, Michigan; and (iii) all of WEPCo's Michigan retail full requirements and retail access service customers (except initially the Mines) and all of WPS Corp's Michigan retail full requirements electric and gas customers, retail access electric customers, and gas transportation customers. WEPCo and WPS Corp will form UMERC as described in the June 14, 2016 filing. The signatories to this Settlement Agreement shall recommend

these transfers be authorized as necessary to enable UMEREC to commence providing service to the transferred customers (except for the Mines) on January 1, 2017.

b. WEC Energy Group, Inc. (“WEC”), WEPCo, and WPS Corp (as applicable) shall:

(1) In the event of: (i) an involuntary termination of the Retail Large Curtailable Special Contract between WEC and Tilden dated August 12, 2016 (“2016 Tilden Special Contract”), appended as Attachment A hereto; and (ii) Tilden is not able to pay, per a bankruptcy ruling, then WEC will be responsible for and protect UMEREC’s other ratepayers from the cost associated with Tilden’s portion of the capital investment, depreciation expense, and return on investment, taxes and fixed operating costs in the new generator units that would be the subject of UMEREC’s planned Certificate of Necessity (“CON”) proceeding, so that such costs are not passed on to UMEREC’s ratepayers.

(2) So long as the Proposed Transaction to create UMEREC is approved as specified in the June 14, 2016 filing, indemnify UMEREC and its customers for potential tax effects resulting from a later determination by the Internal Revenue Service that the Proposed Transaction is a taxable transaction.

(3) Commit to having UMEREC provide details on the financing of the new proposed generation facilities units in the CON application and as applicable, provide any options that may be reasonably available, including options involving WEC to mitigate the cost of debt financing.

(4) Allocate to UMEREC a portion of the remaining book value when PIPP is retired and other associated retirement costs (including, but not limited to,

decommissioning costs) of the Presque Isle Power Plant (“PIPP”) based on a load ratio share of 6.595% of the WEPCo system. These amounts allocated by WEPCo to UMERCo shall be a regulatory asset that UMERCo shall be entitled to fully recover in a future UMERCo general rate case or other proceeding. Tilden’s portion of the undepreciated remaining book value of PIPP when it is retired and associated retirement and decommissioning costs will be allocated consistent with Section 2.1.10.2 of the 2016 Tilden Special Contract. UMERCo will not seek to collect the Tilden portion of these amounts through a non-bypassable charge to non-Tilden customers.

(5) Commit to have UMERCo submit, for MPSC consideration as part of the CON application case, fuel and/or energy cost hedging options regarding the UMERCo non-Mines load.

(6) Commit to have UMERCo file a Renewable Energy (“RE”) Plan, and WEPCo shall file a revised RE Plan, within 90 days of a Commission order approving this Settlement Agreement.

c. WEPCo shall be authorized to transfer the Mines as customers to UMERCo (“Mines Transfer”) after termination of both 2015-2019 Large Curtailable Special Contracts between WEPCo and the Mines approved in Case No. U-17862 (“Mines’ Special Contracts”), without the need for further Commission approval. UMERCo will provide notice to the Commission within 30 days after the Mines’ Transfer.

d. UMERCo shall adopt WEPCo’s current Michigan tariff base electric rates for purposes of providing service to former WEPCo Michigan customers in UMERCo’s WEPCo Rate Zone, and shall adopt WPS Corp’s current Michigan tariff base electric

rates (and to implement previously-approved phased-in rate increases authorized in Case No. U-17669) and current Michigan tariff natural gas base rates to apply to service to former WPS Corp Michigan customers in UMEREC's WPS Corp Rate Zone, at the time the Proposed Transaction is consummated and, without waiving the right to self-implement rates (if the right still exists), until UMEREC receives approval of new base rates for electric and/or gas service pursuant to a Commission order(s).

e. The capacity charges in power purchase agreements ("PPA") that substantially conform to the WEPCo PPA and the WPS Corp PPA that were pre-filed as Exhibits A-__ (DMD-1) and A-__ (DMD-2), respectively, in this docket should be approved pursuant to MCL 460.6j(13)(b).

f. UMEREC shall adopt the power supply cost recovery ("PSCR") clauses of WEPCo and WPS Corp, pursuant to which UMEREC will recover PSCR costs via separate PSCR factors for the WEPCo Rate Zone and the WPS Corp Rate Zone, respectively, subject to the Commission's approval in annual PSCR plan and PSCR reconciliation cases. For the WEPCo Rate Zone, the PSCR base shall be \$45.47 per MWh at sales level, and for the WPS Corp Rate Zone the PSCR base shall be \$39.43 per MWh at generation level. UMEREC shall apply for the WEPCo Rate Zone and the WPS Corp Rate Zone the current authorized rate of return on common equity ("ROE") for WEPCo and WPS Corp, respectively, to any PSCR over-recoveries. Until UMEREC files a Michigan retail electric rate case and receives authority to implement new PSCR base(s), it will exclude the generation-related ownership costs that are included in the capacity and energy rates of both the WEPCo PPA and the WPS Corp PPA for purposes of the PSCR factor calculations in its annual PSCR plan and reconciliation cases. UMEREC is

authorized to implement for the WEPCo Rate Zone and the WPS Corp Rate Zone, up to the 2017 PSCR factors authorized by law for WEPCo and WPS Corp, respectively, through December 31, 2017.

g. UMERC shall file a reconciliation of the 2016 WPS Corp PSCR costs and revenues, and the 2016 over or under recovery, representing either a regulatory liability or asset, shall be transferred to UMERC's WPS Corp Rate Zone to be rolled into the beginning balance of UMERC's 2017 PSCR reconciliation for the WPS Corp Rate Zone. For WEPCo's 2016 PSCR reconciliation, UMERC and WEPCo shall file a reconciliation of 2016 WEPCo PSCR costs and revenues, and the 2016 over or under recovery, representing either a regulatory liability or asset, shall be allocated between the WEPCo non-Mine load that will be served by UMERC, and the Mines' load, on a proportional MWh basis. A single, uniform reconciliation adjustment factor for 2016 will be determined based on projected 2017 loads and applied to both non-Mine and Mine loads in 2017. The portion of the over or under recovery for the Mines' load will be maintained at WEPCo as a regulatory liability or asset to be rolled into the beginning balance WEPCo's 2017 PSCR reconciliation, and the over or under recovery allocated to the non-Mine load will be transferred to UMERC's WEPCo Rate Zone as a regulatory asset or liability to be rolled into the beginning balance of UMERC's 2017 PSCR reconciliation for the WEPCo Rate Zone.

h. For purposes of serving the Mines, WEPCo will continue to have a PSCR Clause, and for 2017 and subsequent years for as long as the Mines are a customer of WEPCo, WEPCo shall file annual PSCR plans and reconciliations for its service to the Mines.

i. UMERC shall adopt WPS Corp's GCR clause for natural gas service in the WPS Corp Rate Zone. UMERC shall file to reconcile WPS Corp's GCR costs and revenues for the 2015-16 GCR reconciliation period and any GCR under or over recovery shall be transferred to UMERC as a regulatory asset or regulatory liability, as applicable, and UMERC shall roll-in the GCR under recovery or over recovery as the beginning balance of the 2016-17 GCR reconciliation. Any future GCR costs will be recovered, subject to the Commission's approval, through the annual GCR plan and reconciliation process for UMERC.

j. All approvals, authority, consents waivers, etc., previously granted to WEPCo and WPS Corp in connection with their provision of electric and natural gas service to Michigan customers shall apply to UMERC, including, but not limited to, the following:

(1) All approved deferred costs accounting, including (but not limited to) those granted in Case Nos. U-11721, U-17232, U-17463, and U-17669.

(2) All previously-approved depreciation rates, which shall apply to the assets of WEPCo and WPS Corp that are transferred to UMERC.

(3) All regulatory assets and all regulatory liabilities, including, but not limited to, those described in the Contribution Agreements filed as exhibits to the pre-filed direct testimony of James A. Schubilske in this docket.

(4) All certificates of public convenience and necessity, 1929 PA 69, MCL 460.501 *et seq.*, approvals, or similar authority.

(5) All accounting authorizations not listed above, including the treatment and recovery of manufactured gas plant costs.

(6) All authorizations under Rule 411, Mich Admin Code, R 460.3411.

(7) All approvals, authorizations, consents, waivers, certificates etc., for UMERB to provide electric service upon consummation of the Proposed Transaction in all areas that were served by WEPCo in Michigan prior to consummation of the Proposed Transaction, and for UMERB to provide electric service in the territory in which WEPCo served the Mines after the Mines Transfer.

(8) All approvals, authorizations, consents, waivers, certificates etc., for UMERB to provide electric service and natural gas service in all areas that were served by WPS Corp in Michigan prior to consummation of the Proposed Transaction.

k. As WEPCo will continue to provide service to one or both Mines until the time of the Mines Transfer, WEPCo shall retain all approvals, authority, consents, waivers, certificates, etc., necessary to serve the Mines until the Mines Transfer occurs. All such approvals, authority, consents, waivers, certificates, etc., retained by WEPCo for its service to the Mines shall transfer to UMERB at the time of the Mines Transfer without the need for further Commission approval, except for Commission required approvals related to RE and energy optimization ("EO").

l. WEPCo shall: (i) create a new Volume 4 of the WEPCo Electric Rate Book that substantially conforms to the version pre-filed in this case as Exhibit A-__ (DMD-11), which will remove all rate schedules except for those pertinent to serve the

Mines, effective upon consummation of the Proposed Transaction¹; and (ii) cancel the WEPCo Electric Rate Book Volume 4 after the Mines Transfer.

m. UMERC shall file a Rate Book for Electric Service and a Rate Book for Natural Gas Service substantially similar to those pre-filed in this case as Exhibits A-___ (DMD-10) and A-___ (DJK-1), updated as necessary to include any new rates, charges, or other provisions approved for WEPCo or WPS Corp subsequent to the filing of the Joint Application.

n. UMERC shall adopt the following EO plan:

(1) For natural gas customers in the WPS Corp Rate Zone, UMERC shall adopt and implement the natural gas EO plan approved in Case No. U-17776 for WPS Corp's Michigan gas operations, which includes a 2017 payment to the Administrator of \$114,894, and adopt the EO surcharges approved in Case No. U-18018 for WPS Corp's natural gas service.

(2) For electric service customers, UMERC shall make a 2017 EO payment to the Administrator in the amount of \$1,307,301, based on the sum of: (i) the \$394,499 approved for WPS Corp for 2017 in Case No. U-17776; and (ii) the \$912,802 approved for UMERC for 2017 in Case No. U-18019. EO surcharges for the WEPCo Rate Zone shall be those approved for UMERC's WEPCo Rate Zone in Case No. U-18019, and the EO surcharges for the WPS Corp Rate Zone shall be those approved in Case No. U-18018.

¹ The WEPCo Electric Rate Book Volume 4 pre-filed in this case as Exhibit A-___ (DMD-11) showed that the rate sheets applicable to Rate CpLC would be stricken (*e.g.*, pages 102-105 of the exhibit). The signatories agree that rate sheets applicable to Rate CpLC will not be stricken and will be included in WEPCo Electric Rate Book Volume 4 that WEPCo files in accordance with this Settlement Agreement.

o. No additional waivers are required under the Code of Conduct and the Affiliate Transaction Guidelines of Case No. U-13470 with respect to the affiliated interest agreements described in the Joint Application and supporting testimony.

p. Upon consummation of the Proposed Transaction, UMERB shall be entitled to be added or substituted as a party in all proceedings before the MPSC involving WPS Corp's electric and natural gas service to Michigan customers, and in all Commission proceedings involving WEPCo's electric service to Michigan customers, in which WEPCo and/or WPS Corp are parties.

q. UMERB shall be entitled to keep its books and records outside of Michigan.

r. Retail access service ("RAS") customers of WEPCo and WPS Corp at the time of consummation of the Proposed Transaction will be transferred to UMERB as RAS customers, and UMERB will administer RAS consistent with applicable statutes and Commission rules and orders. Such transferred RAS customers will remain RAS customers unless they elect to return to full requirements electric service, are returned to service by their alternative supplier, or such return is required by a Commission order or a change in law. UMERB further agrees that it will not seek a Commission order under existing law requiring such return.

s. The signatories to this Settlement Agreement will not object to a petition to intervene filed by Cloverland in UMERB's CON application proceeding.

6. The signatories agree that this Settlement Agreement is reasonable, prudent, in the public interest and will aid in the expeditious conclusion of this case.

7. The signatories agree that, if there are no contested settlement proceedings in this case, the signatory parties' direct and rebuttal testimony and exhibits will be admitted into evidence without cross-examination. If a party does contest this settlement agreement, the signatories will discuss whether to waive cross-examination of any testimony or exhibits.

8. If the Commission approves this Settlement Agreement without modification, none of the parties will challenge the Commission's Order in Case No. U-18061 approving this settlement, including but not limited to challenging the Commission's authority, the lawfulness of the Commission's approval, or the adequacy of the record to support the Commission's Order.

9. This Settlement Agreement has been made for the sole express purpose of reaching compromise among the positions of the signatories. All offers of settlement and discussions relating to this Settlement Agreement shall be considered privileged as provided in MRE 408. If the Commission approves this Settlement Agreement without modification, none of the signatories to this Settlement Agreement nor the Commission shall use it as a reason, authority, rationale or example for taking any action or position or making any subsequent decision in any other cases or proceeding; provided, however, such reference or use may be made to enforce the Settlement Agreement and Order.

10. Provided that all parties to this case are signatories to this Settlement Agreement or file statements of non-objection or fail to object within the time frame set forth in Rule 431 of the Rules of Practice and Procedure Before the Commission, then it is agreed that Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, is waived as it applies to this proceeding, if the Commission approves this Settlement Agreement without modification.

11. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of the Settlement Agreement. Failure to

comply with any provision of the Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, the Settlement Agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose.

12. Nothing in this Settlement Agreement shall be interpreted to release or otherwise modify any obligation of signatories to the Amended Restated Settlement Agreement in MPSC Case No. U-17682.

WEC ENERGY GROUP, INC.
WISCONSIN ELECTRIC POWER COMPANY,
WISCONSIN PUBLIC SERVICE CORPORATION
and UPPER MICHIGAN ENERGY RESOURCES
CORPORATION

Michael
C.

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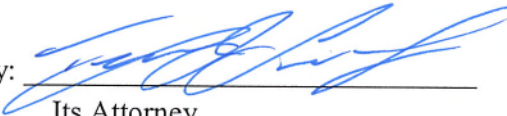
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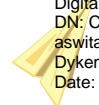
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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
WISCONSIN PUBLIC SERVICE CORPORATION,)	
and UPPER MICHIGAN ENERGY RESOURCES)	
CORPORATION for approval, pursuant to MCL 460.6q,)	Case No. U-18061
for the transfer of control of Wisconsin Electric)	
Power Company's Michigan electric distribution)	
assets and Wisconsin Public Service Corporation's)	
Michigan electric and natural gas distribution assets to)	
to Upper Michigan Energy Resources Corporation,)	
<u>and related approvals.</u>)	

ATTACHMENT A
TO SETTLEMENT AGREEMENT

Only A Redacted Version Is Attached To This Settlement Agreement

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Execution Version

RETAIL LARGE CURTAILABLE SPECIAL CONTRACT

This RETAIL LARGE CURTAILABLE SPECIAL CONTRACT, including all Exhibits (the "Agreement"), is made and entered as of this 12th day of August, 2016, by and between WEC Energy Group, Inc., a Wisconsin corporation ("WEC" or "Seller"), AND Tilden Mining Company L.C., by The Cleveland-Cliffs Iron Company, its Managing Agent ("Tilden"), a Michigan limited liability company ("Buyer"). Hereinafter, the parties hereto are sometimes referred to collectively as the "Parties," or each individually as a "Party".

WITNESSETH

WHEREAS, Seller is a public utility holding company whose electric Affiliates are engaged in the business of generating, distributing and selling electric power and energy and related services at wholesale and retail within the States of Wisconsin and Michigan;

WHEREAS, Buyer is a Michigan retail electric customer of Wisconsin Electric Power Company, an Affiliate of the Seller, and is in the business of mining within the Upper Peninsula of the State of Michigan;

WHEREAS, Buyer currently purchases its electric power needs from Wisconsin Electric Power Company on its own behalf;

WHEREAS, the Parties are signatories to an Amended and Restated Settlement Agreement (ARSA) with the State of Michigan regarding the desire for a comprehensive energy solution for the Upper Peninsula of Michigan;

WHEREAS, the Parties have jointly and mutually arrived at a solution that meets the objectives of the ARSA;

WHEREAS, each Party believes it is in its best interest and desires to enter into this Agreement as further described herein;

NOW, THEREFORE, in consideration of the recitals and mutual promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE ONE
GENERAL DEFINITIONS**

- 1.1 As used in this Agreement, the following terms have the meanings set forth below:

ACA has the meaning given such term in the natural gas pipeline provider's tariff.

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Administrative and General Expense (A&G) means Seller's costs of staff salaries, executive wages and benefits, depreciation on office fixtures and equipment, insurance, legal counsel salaries, office supplies, accounting and tax fees, legal fees, subscriptions, etc. For purposes of the Agreement, A&G shall be equal to [REDACTED] per month, adjusted annually on the anniversary of the start of the Delivery Period using the Consumer Price Index - All Urban Consumers (CPI-U) U.S. City Average, All items less food and energy, not seasonally adjusted, 1982-1984=100 reference base.

Actual Generation Daily Heat Rate (AGDHR) means the daily calendar DTH actual gas consumption for Generation Resources in an Operating Day divided by the daily calendar actual MWh output, net of any unit auxiliary load, from Generation Resources.

Affiliate means any Person directly or indirectly controlling or controlled by or under direct or indirect common control of a specified Person. For purposes of this definition, "control" means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of more than 50% of the outstanding stock or other equity interest of a Person has control of such Person. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

ARR/FTR Benefit Credit means credits or charges associated with Auction Revenue Rights [REDACTED]

ATC means American Transmission Company, LLC, or its successors.

Auction Revenue Rights (ARRs) has the meaning given in the MISO Tariff.

Billing Cycle means each calendar month during the Delivery Period and any partial calendar month at the beginning or end of the Delivery Period.

Buyer has the meaning given such term in the preamble.

Calendar Year means the twelve month period beginning on January 1 and ending on December 31.

Capacity means the capability to generate a particular amount of electrical energy at a particular time that meets the requirements for capacity established by MISO.

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Commercial Pricing Node (CP Node) has the meaning given in the MISO Tariff.

Commercial Operation Date (COD) means the date that Seller notifies Buyer that the Generation Resources are capable of sufficient deployment to meet Seller's obligations under this Agreement. [REDACTED]

CON means a Certificate of Necessity for a Generation Resource issued by the Michigan Public Service Commission.

Day means a 24-hour period beginning at 12:01 am EST and ending at 12:00 midnight EST.

Day-Ahead Cleared Load means the quantity [REDACTED] purchased in the MISO Day-Ahead Market for a given hour during an Operating Day.

Day-Ahead Cleared Generation Resource Energy means the quantity of Generation Resource Energy [REDACTED]

Day-Ahead Cleared Generation Resources means the quantity of Generation Resources Energy [REDACTED]

Day-Ahead Make Whole Payment means the Day-Ahead Revenue Sufficiency Guarantee Credit as defined in the MISO Tariff [REDACTED].

Day-Ahead Cleared Generation Resources Make Whole Payment Credit means the product of the Day-Ahead Make Whole Payment associated with the Day-Ahead Cleared Generation Resources [REDACTED]

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Day-Ahead Weighted Generation Resources LMP means the weighted average of the MISO Day-Ahead Market LMP for the Generation Resources [REDACTED]

Deferred Payment Agreement means the Deferred Payment Amendment to the Tilden 2015 – 2019 Large Curtailable Special Contract.

Demand Bid means a financially binding bid to purchase Energy [REDACTED]

Delivery Period means the period of time described in Section 2.0.4.

Distribution Facilities means the existing 138,000 to 13,800 volts transformation and associated equipment currently owned by Wisconsin Electric Power Company at the existing Tilden and Empire substations at or near Buyer's locations.

DTH means deca-therm.

Electric Infrastructure means one of each of the following to support the electrical interconnection of the generation to the electric transmission system: [REDACTED]

Energy has the meaning given such term in the MISO Tariff.

Environmental Credits means credits or charges resulting from existing or future environmental attributes that are associated with electricity generated from the Generation Resources including carbon emissions, carbon offsets, carbon allowances, carbon dioxide emissions, or other environmental credits or charges whether pursuant to or arising from any Governmental Authority.

EPC has the meaning given such term in the natural gas pipeline provider's tariff.

EST means Eastern Standard Time.

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Firm Load means the load level that is Buyer's level of firm service under the Agreement.

[REDACTED]

Force Majeure means any cause or occurrence beyond the reasonable control of and without the negligence of the Party claiming Force Majeure which causes the Party to be unable, or otherwise materially impairs its ability, to perform its obligations in whole or in part hereunder. Subject to the foregoing, such causes or occurrences may include any acts of God; acts of the public enemy; change in environmental-related Law; terrorism; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; civil disturbances; strikes, lockouts or work stoppages; and any other cause, whether of the kind herein enumerated or otherwise, which, despite reasonable efforts of such Party to prevent or mitigate its effects, prevents or delays the performance of a Party, or prevents the obtaining of the benefits of performance by the other Party, and is not within the control of the Party claiming excuse. The following acts, events or causes shall in no event constitute an event of Force Majeure: (i) any lack of profitability to a Party or any losses incurred by a Party or any other financial consideration of a Party; or (ii) unavailability of funds or financing.

Gas Infrastructure means new laterals as required.

Generation Delivery Point means the point of delivery of Generation Resource Energy [REDACTED]

Generation Resource means the Reciprocating Internal Combustion Engines installed at a single location for this Agreement. [REDACTED]

[REDACTED]

Generation Resources means the aggregate of each Generation Resource installed for this Agreement. [REDACTED]

[REDACTED]

Generation Resources Capital Expense means an amount spent during the Delivery Period to acquire or improve the Generation Resources, Gas Infrastructure, or Electric Infrastructure.

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Generation Resources Energy means the sum of Energy output from each Generation Resource.

Generation Resources Operational Expense means all the operations and maintenance expense and labor expense required to maintain the Generation Resources, Gas Infrastructure, and Electric Infrastructure in good operating condition in accordance with Good Utility Practice.



Good Utility Practice means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather, intended to include acceptable practices, methods, or acts generally accepted in the region that is contemplated by this Agreement but not necessarily codified.

Governmental Authority means (i) the federal government of the United States, (ii) any state, county or local government, (iii) any regulatory department, body, political subdivision, commission, bureau, administration, agency, instrumentality, ministry, court, judicial or administrative body, taxing authority, (iv) any other authority of any of the foregoing (including any corporation or other entity owned or controlled by any of the foregoing), and (v) MISO, NERC, and RFC; in each case in (i) - (v) above having jurisdiction over any or all of the Parties, this Agreement or the transmission system operated by MISO, whether acting under express or delegated authority.

Law means any federal, state and local laws, statutes, regulations, rules, codes, orders, judgments, decrees or ordinances enacted, adopted, issued or promulgated by any Governmental Authority, including any authorizations issued to a Party or by which a Party may be bound (including any of the foregoing pertaining to electrical, building, zoning, environmental and occupational safety and health requirements) or any published directive, guideline, tariff, requirement or other restriction of a Governmental Authority or any determination by, or interpretation of, any of the foregoing by any Governmental Authority, binding on a given Person in a relevant jurisdiction.

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LMP means the “Locational Marginal Price” as determined by MISO.

LMR means Load Modifying Resource and has the meaning given such term in the MISO Tariff.

[REDACTED]

Market Participant has the meaning given such term in the MISO Tariff.

MISO means the Midcontinent Independent System Operator, Inc., or any successor organization.

MISO Administrative Charges means charges or credits assessed to a Market Participant that are based on MISO operating costs, which are (i) currently reflected in MISO Schedule 17 and Schedule 24, as may be modified or deleted and replaced from time to time; or (ii) included in any other schedule as may be applicable under MISO Tariff that is similar in nature and function to the schedules in (i) above.

MISO Day-Ahead Market means the Day-Ahead Energy and Operating Reserves Market as defined in the MISO Tariff.

MISO Real-Time Market means the Real-Time Energy and Operating Reserves Market as defined in the MISO Tariff.

MISO Tariff shall mean the document adopted by MISO, and subject to review by the Federal Energy Regulatory Commission (“FERC”), including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of MISO. For the purposes of determining responsibilities and rights at a given time, the MISO Tariff, as amended in accordance with the change procedure(s) described in the MISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

MISO Planning Year means the twelve month period from June 1 through May 31 of the following year, as subject to modification by MISO.

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MISO Value of Lost Load has the meaning given such term in the MISO Tariff

[REDACTED]

MPSC means the Michigan Public Service Commission, or its successor.

MW means a megawatt.

MWh means a megawatt-hour.

NERC means the North American Electric Reliability Corporation, including in its capacity as the Electric Reliability Organization appointed by FERC, or any successor organization.

Non-Firm Planning Load means the difference in MW between the Planning Load amount and the Firm Load amount.

Operating Day has the meaning given such term in the MISO Tariff or related documents.

Party(ies) has the meaning given such term in the preamble.

Person means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

Planning Load means the load level in MWs selected by Buyer and to which Buyer commits to operate at or below during any curtailments, including non-emergency curtailments requested by MISO, ATC, or other reliability authority during the Delivery Period.

Planning Reserves means the amount of generation required to be maintained pursuant to the generation resource planning reserve margin requirements approved and administered by each Governmental Authority with respect to which Seller is obligated to meet generation resource planning reserve margin requirements.

[REDACTED]

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[REDACTED]

RFC means the ReliabilityFirst Corporation, or any successor organization.

Seller has the meaning given such term in the preamble, provided however, if Seller assigns all its rights and obligations under this Agreement to a permitted assignee, it shall mean such permitted assignee.

UMERC means Upper Michigan Energy Resources Corporation.

[REDACTED]

[REDACTED]

ARTICLE TWO

CONTRACT SPECIFICS AND OPERATIONAL MECHANICS

2.0 Term of Agreement, Character of Service, and Delivery Period

2.0.1 **Term:** This Agreement is effective upon signing by both Parties (such date the "Effective Date") and continues through to the conclusion of the Delivery Period and payment by Buyer of all amounts due under this Agreement (the foregoing described period, the "Term"), unless earlier terminated in accordance with the terms of this Agreement.

2.0.2 During the Delivery Period, Seller will supply three-phase, 60 hertz, power service to Buyer at approximately 13,800 volts. Seller will provide such service through the Distribution Facilities; such facilities shall only be used to supply power service to Buyer or for auxiliary load of future generation facilities. Seller shall be responsible for the operation, repair and maintenance of such transformation and associated distribution facilities.

2.0.3 **Metering:** Seller shall install and maintain all apparatus and materials necessary for the measurement of Buyer's load. Distribution loss

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compensation, related to the Distribution Facilities, will be applied as applicable.

- 2.0.4 Delivery Period: Twenty (20) years beginning with the HE01 EST of the first day of the first month following the Commercial Operation Date ("COD") subject to this Agreement. For clarity, if the COD is May 10, 2019, the delivery period will be from June 1, 2019 through May 31, 2039.
- 2.0.5 Conditions: This Agreement shall be binding on and after the date of execution by both Parties. Notwithstanding the foregoing, the Parties' obligations under this Agreement are expressly subject to the fulfillment and satisfaction of each of the conditions identified in Exhibit C.
 - 2.0.5.1 Except with respect to the conditions identified in Part 5 B. of Exhibit C, in each case the fulfillment of each condition shall be determined in form and substance satisfactory to Seller in Seller's sole discretion; provided that Seller may waive any such condition or may extend the date for fulfillment of any such condition by written notice to Buyer no later than the date for satisfaction of the condition. In the event that any of the conditions have not been fulfilled and satisfied by the date indicated, Seller may terminate this Agreement without further obligation by written notice to Buyer delivered no later than thirty (30) days after the date for satisfaction of the condition. If no such termination notice is delivered by Seller, this Agreement shall remain in full force and effect, and Seller shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.
 - 2.0.5.2 With respect to the condition identified in Part 5 B. of Exhibit C, the fulfillment of such condition shall be determined in form and substance satisfactory to both Buyer and Seller in their discretion; provided that they may waive such condition or may extend the date for fulfillment of such condition by mutual agreement no later than the date for satisfaction of the condition. In the event that the condition has not been fulfilled and satisfied by the date indicated, either Party may terminate this Agreement without further obligation by written notice to the other Party delivered no later than thirty (30) days after the date for satisfaction of the condition. If no such termination notice is delivered, this Agreement shall remain in full force and effect, and the Parties shall be deemed to have waived their right to terminate this Agreement pursuant to this Section.

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[REDACTED]
[REDACTED]
[REDACTED]

2.1 Pricing

2.1.1 The rates and charges in this Agreement apply during the Delivery Period.

2.1.2 Planning Load Charge Rate

2.1.2.1 The Planning Load Charge Rate shall be [REDACTED]-year and is applicable to all Planning Load. The Planning Load Charge Rate is based on total project costs of [REDACTED] of installed generation and includes construction and acquisition financing, Generation Resources, balance of plant, land, Gas Infrastructure, and Electric Infrastructure. If Seller's total actual project costs exceed [REDACTED], and the additional cost is due to additional environmental improvements required at the Generation Resources, the project site(s), and adjacent sites to the project site(s), then the Planning Load Charge shall be increased to include the incremental cost above [REDACTED] up to a maximum of [REDACTED]. Seller shall notify Buyer of any such cost adjustments, subject to Buyer verification, prior to the start of the Delivery Period.

2.1.2.2 If CON is not approved by December 31, 2017, then an adjustment will be applied to the project cost. The adjustment will be equal to the percentage change in the [REDACTED] [REDACTED] Index between December 2017 and the month when the CON is approved.

2.1.3 Non-Firm Planning Load Credit Rate

2.1.3.1 The Non-Firm Planning Load Credit Rate shall be equal to [REDACTED] of the Planning Load Charge Rate. The Non-Firm Planning Load Credit Rate is applicable to all Non-Firm Planning Load.

2.1.4 Monthly Fixed Charges

2.1.4.1 Monthly Fixed Charges (\$/month) shall be adjusted annually and consist of a direct pass through of actual costs, including:

2.1.4.1.1 Direct pass through of [REDACTED] of actual distribution costs for service to Buyer; to be determined using a direct

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assignment method that is limited to Seller's actual costs of Seller's transformation and associated distribution facilities at Buyer's location, using FERC-approved fixed charge methodology process;

2.1.4.1.2 Direct pass through of [REDACTED] of Administrative and General Expense to Buyer;

2.1.4.1.3 Generation Resources Operational Expense: Direct pass through of [REDACTED] of actual costs to Buyer; and

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.1.4.1.4 If Seller incurs a Generation Resources Capital Expense, Seller shall pass through [REDACTED] of such capital expenditures to Buyer [REDACTED]
[REDACTED] resulting in a monthly fixed charge. Upon notice to Buyer by Seller of the Generation Resources Capital Expense, Buyer shall pay the monthly fixed charge on a monthly basis for the remaining duration of the

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Delivery Period. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.1.5 ATC Charges

2.1.5.1 ATC Charges are variable charges and consist of [REDACTED]

[REDACTED]
[REDACTED]

2.1.6 MISO Load Charges

2.1.6.1 MISO charges related to load are variable charges determined as follows:

2.1.6.1.1

[REDACTED]
[REDACTED]

2.1.6.1.2

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.1.6.1.3

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

2.1.7.2 Energy Charge – Generation

2.1.7.2.1 The Energy Charge – Generation (\$) is calculated for each hour in the Billing Cycle on an after-the-fact basis and consists of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

2.1.9 Energy Optimization and Renewable Energy Charge

2.1.9.1 The Energy Optimization Charge shall be a variable charge. The Energy Optimization charge shall consist of a direct pass through of actual MPSC-approved charges and credits for service to Buyer, if any, in accordance with Michigan law.

2.1.9.2 The Renewable Energy Charge shall be the maximum allowed by statute, currently \$187.50 per meter per month, provided that Seller and its Affiliates are held harmless.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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2.2 Generation

2.2.1 Seller has selected Reciprocating Internal Combustion Engines (RICE) technology for this application.

2.2.2 The RICE units are currently planned to be installed at two locations to approximately match Planning Load (Reference Exhibit A – Generation Installation Location Map) as follows:

2.2.2.1 West Region Site Location – Installed MW dependent on MISO analysis, and

2.2.2.2 Either a Central North Site Location or a Central South Site Location for the balance of Planning Load.

2.2.2.2.1 Buyer shall cooperate with Seller in the evaluation of site(s) for the Generation Resource. The Parties will work together to identify a site acceptable to Seller for use by Seller for the construction and operation of the Generation Resources, within 30 days of the Effective Date.

2.2.3 Seller shall have sole authority and discretion for selection of the RICE vendor, generation unit sizes, number and location of sites and shall advise Buyer of its selection.

2.2.4 The total generation shall be sized in MW increments to achieve as close to the projected Planning Load level requested by Buyer as commercially reasonable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

2.3 Capacity

- 2.3.1 Buyer must provide Seller with its projected Planning Load level within twenty (20) days following execution of this Agreement, such Planning Load level to be no less than 165 MW and no greater than 185 MW. Absent such notice as required, the projected Planning Load shall be deemed to be 170 MW.
- 2.3.2 Seller will provide Buyer written notification of Buyer's final Planning Load level options based on Buyer's projected Planning Load level and Seller's generator unit size selection when selected by Seller but in any event no later than [REDACTED]
- 2.3.3 Buyer shall notify Seller by [REDACTED], of its final Planning Load level option selection as presented by Seller in 2.3.2.
- 2.3.4 Buyer must provide Seller with its final Firm Load level at least 150 days prior to the beginning of the MISO Planning Year in which COD is expected to occur. Seller will notify Buyer of the projected COD and any changes to the projected COD. If Buyer does not provide Seller with its Firm Load level as required, then the initial Firm Load level shall be assumed to be zero (0).

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

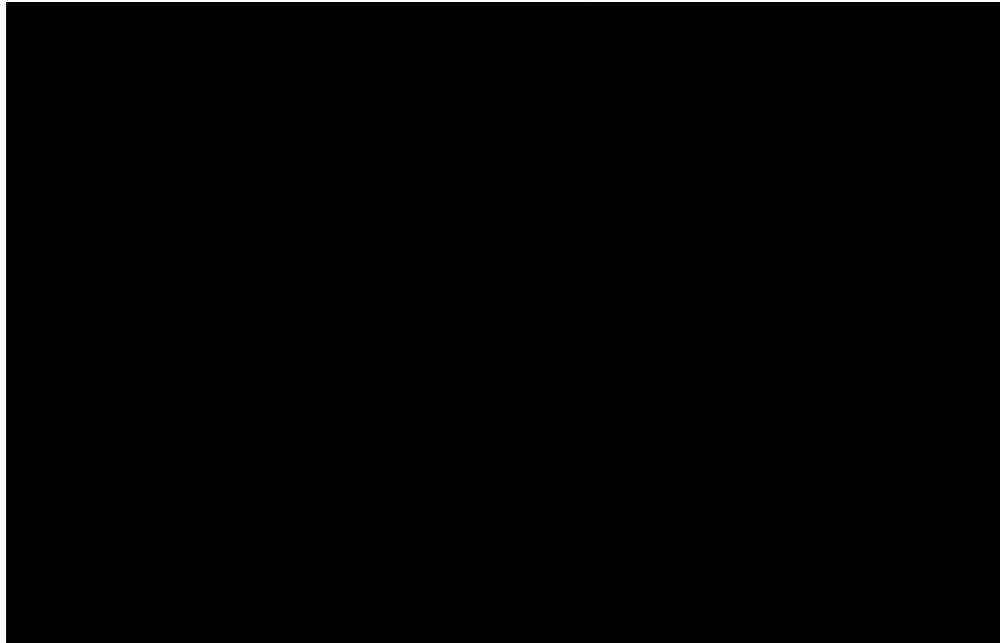
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2.5 Operation Protocol

2.5.1 The Parties shall work together to establish an Operation Protocol required of both Parties related to implementation of this Agreement. Such Operation Protocol shall contain an effective date and shall be executed by both Parties prior to implementation.

2.5.2 Such Operation Protocol is contained in Exhibit B – Operations Protocol and may be amended as necessary in accordance with the requirements of Section 2.5.1 to effectuate the administration of this Agreement.

2.6 Buyer's Curtailment Obligations

2.6.1 Buyer shall be subject to curtailment requirements as instructed by MISO, ATC or other reliability authority. Such requirements may include load reduction to Firm Load levels and opening of transmission or distribution system circuit breakers serving Buyer's load. Such instructions will be relayed to Buyer through Seller as the MISO Market Participant as soon as commercially feasible to provide Buyer adequate time to comply with the curtailment requirement.

2.6.2 Buyer will be subject to non-curtailment charges as outlined in this Agreement.



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[REDACTED]

2.6.3.1 Buyer's Planning Load curtailment obligation survives the termination of this Agreement until the lesser of the tenth anniversary of the date of termination of the Agreement or the end of the original Delivery Period.

[REDACTED]

**ARTICLE THREE
GENERAL TERMS AND CONDITIONS**

3.0 Billing

3.0.1 Seller shall provide to Buyer the necessary billing determinants in sufficient detail for Buyer to reasonably determine the accuracy of each invoice supplied by Seller to Buyer during each Billing Cycle, [REDACTED]

[REDACTED]

3.1 Transmission Service and Ancillary Services

Buyer shall be responsible for the costs of all transmission and ancillary services to serve its load. Seller shall acquire transmission and ancillary services as required by any Governmental Authority for Buyer's load. In such event, Seller will bill, and Buyer shall pay Seller, for transmission and ancillary services and other costs as determined by any Governmental or Regulatory Authority during each Billing Cycle.

3.2 Audit Rights

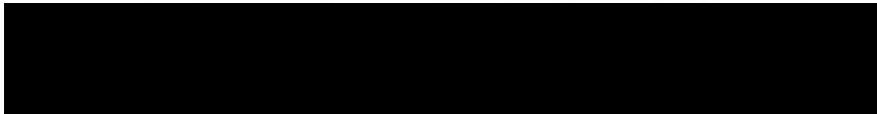
3.2.1 Buyer has the right, at its sole expense and during normal working hours, to examine the records of the Seller to the extent reasonably necessary to verify the accuracy of any billing statement, charge or computation made pursuant to this Agreement. If requested by Buyer, Seller shall provide to

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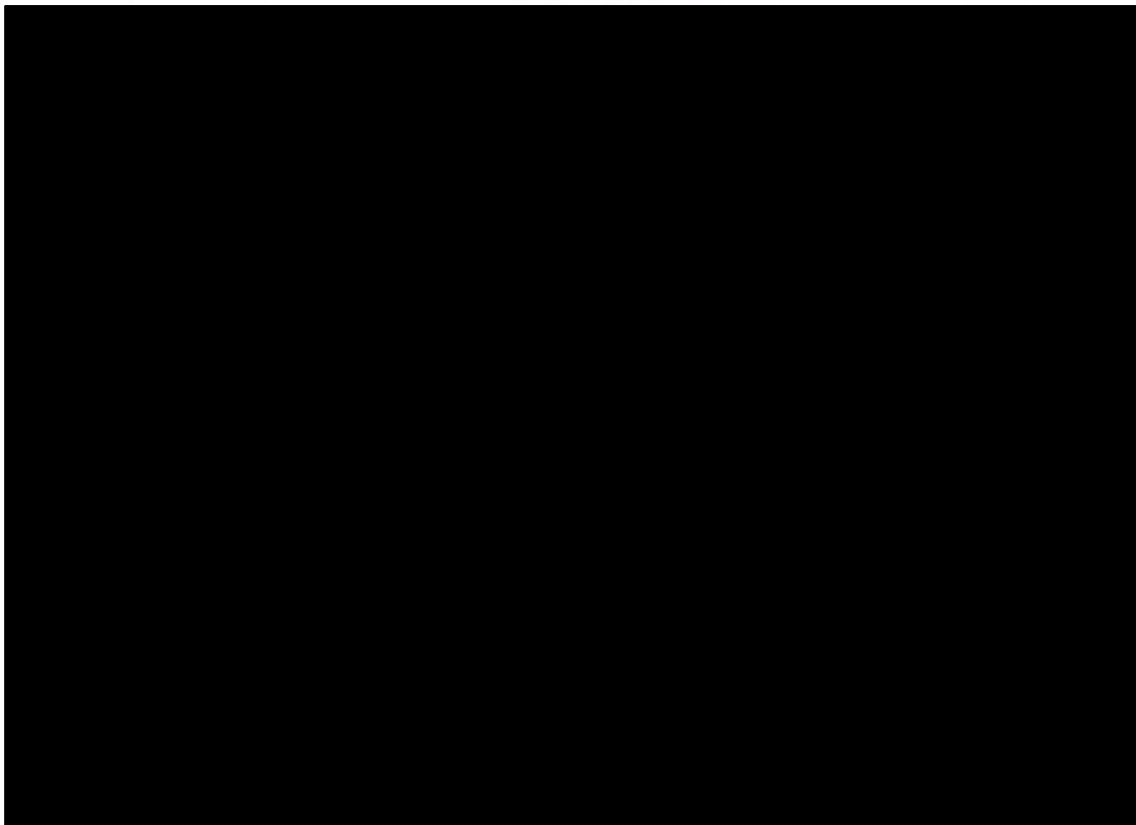
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Buyer additional detailed information in support of the billing statements for a Billing Cycle. If any such examination reveals any inaccuracy in any billing statement, the necessary adjustments in such billing statement and the payments thereof will be made promptly and shall bear interest calculated at the FERC established interest rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any billing statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.



3.4 No Requirement to Construct or Upgrade Facilities

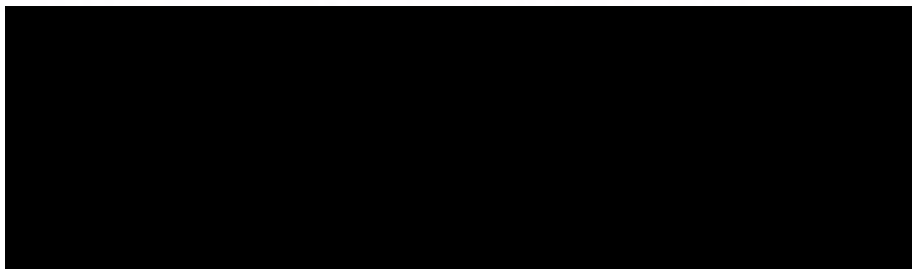
- 3.4.1 Except as expressly otherwise agreed to between Buyer and Seller, Seller shall have no obligation to construct or upgrade any facilities in order to provide any electric service under this Agreement for Buyer.



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3.6 Compliance with Laws

3.6.1 Each Party shall at all times comply in all material respects with the MISO Tariff, all applicable Laws of any Governmental or Regulatory Authority and Good Utility Practice relating to the performance of its obligations under this Agreement. Each Party shall give all required notices, shall procure and maintain all necessary authorizations required for its performance of this Agreement and shall pay all charges and fees in connection therewith.

3.7 Change in Law

3.7.1 In the event there is a change or changes in any Law, or interpretation thereof, enacted, adopted or implemented after execution of this Agreement, or any Law (or the interpretation thereof) is applied to a new or different class of parties (a "Change in Law"), then if the Seller is affected by such Change in Law and its costs in meeting its obligations under this Agreement are increased, such increased costs shall be passed through to Buyer to the fullest extent permitted by Law; if the Seller is affected by such Change in Law and its costs in meeting its obligations under this Service Agreement are decreased, such decreased costs shall be passed through to Buyer to the fullest extent permitted by Law. In the event such increased costs cannot be passed through until approval or acceptance by a Governmental Authority, such increased costs shall be accrued and, following receipt of such approval or acceptance, applied to the earliest (and subsequent) periods permitted by Law.

3.8 Change in Circumstances

3.8.1 Change in Treatment by the MPSC: In the event that the MPSC's treatment from time to time of the revenues received or amounts charged by Seller under this Agreement or the amounts paid by Buyer under this Agreement adversely affects the Buyer or Seller (other than a change constituting a Change in Law pursuant to Section 3.7) then, upon notice by the affected Party to the other Party, the Parties shall use their

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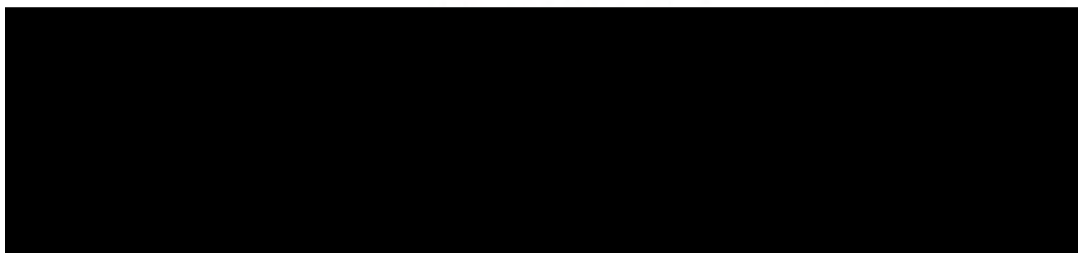
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commercially reasonable efforts to reform this Agreement in order to alleviate such adverse effect on the affected Party.

- 3.8.2 MISO Changes: In the event that, at any time from and after the execution of this Agreement, the MISO Tariff is changed (other than a change constituting a Change in Law pursuant to Section 3.7) or Seller withdraws from the MISO Tariff so that the benefits and burdens or the operative provisions of this Agreement are no longer consistent with the original intentions of the Parties, the Parties shall use their commercially reasonable efforts to reform this Agreement in order to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens to each Party.

3.9 Seller's Rights

- 3.9.1 Except as otherwise specifically provided in this Agreement, Seller shall have the sole rights, authority and discretion to determine all matters in connection with the performance of its obligations under this Agreement.



3.11 Buyer's Participation in Customer Choice under Michigan Law

- 3.11.1 Buyer is prohibited from participating in Customer Choice under the provisions of Michigan Law for the Term of this Agreement.

3.12 Early Termination

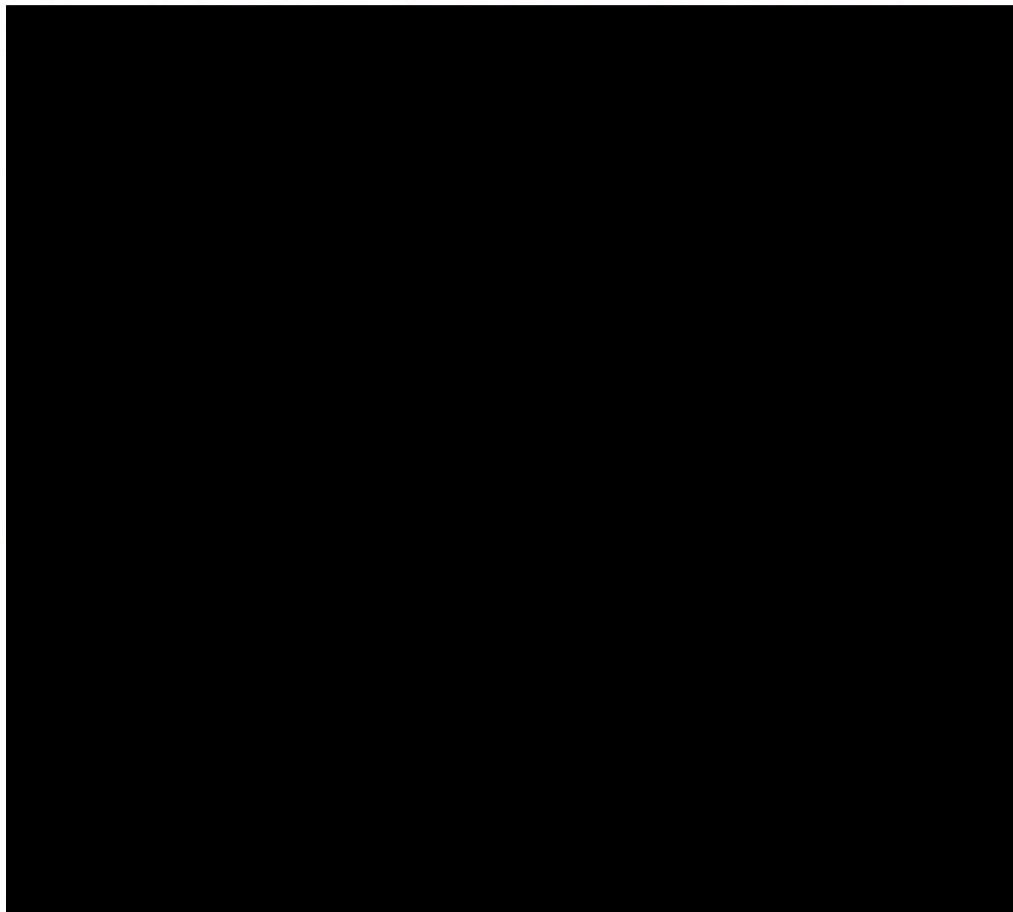
- 3.12.1 Buyer may terminate service under this Agreement upon 60 days written notice to Seller. Such termination would be effective on the first day of the first month subsequent to [REDACTED] written notice ("Termination Date"). If Buyer terminates this service during the Delivery Period or if Seller terminates service for Buyer default, Buyer will pay liquidated damages to Seller determined by summing the following amounts:



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3.12.2 Payment shall be due within 30 days of the Termination Date.

3.13 MPSC Rules and Regulations

3.13.1 Except as otherwise required by law, unless terms contained herein are not consistent therewith, the provisions, all as amended from time-to-time of: (i) the Standard Rules and Regulations as contained in the Rate Book for Electric Service of Seller's Affiliate as approved by the MPSC; (ii) the applicable Administrative Rules established by the MPSC; and (iii) any applicable Michigan law shall govern the sale and distribution of electrical energy to Buyer and this Agreement.

3.14 Default and Cure

3.14.1 A party shall be in default under this Agreement if (i) that party fails to make a payment of any amount required under this Agreement and such failure continues for more than ten (10) days after such party receives written notice of such failure from the non-defaulting party; or (ii) such

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party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement applicable to it and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party; provided, however, that if such default of such other obligation cannot reasonably be cured within such thirty-day (30) period and if the first party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary to complete such curing. If Buyer and/or Cliff Natural Resources, as guarantor, as the case may be, shall be in default under either the Deferred Payment Agreement, of even date herewith between Wisconsin Electric Power Company and Buyer, or Cliff Natural Resources' Guaranty in connection with the Deferred Payment Agreement, such default shall, without any further notice or opportunity to cure, constitute a default by Buyer under this Agreement.

- 3.14.2 Any event of default may be waived at the non-defaulting party's option. Upon the failure of a party to cure any such default after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of this Agreement, do one or more of the following: withhold further performance of its obligations under this Agreement; terminate the Agreement; and/or pursue any legal remedies it may have under this Agreement (including the its rights to the cash collateral account or other security for performance), applicable law or principles of equity relating to such breach.

**ARTICLE FOUR
FORCE MAJEURE**

4.0 Conditions of Excuse

- 4.0.1 If, as a result of an event of Force Majeure, a Party is rendered unable to perform its obligations in whole or in part under this Service Agreement, the obligations of both Parties shall be excused, except as specifically provided elsewhere in this Service Agreement, from that portion of its performance that is prevented by such Force Majeure event to the extent so prevented; provided, that:

- 4.0.1.1 The Party claiming Force Majeure gives the other Party prompt written notice after the Party claiming Force Majeure obtains actual knowledge thereof describing the particulars of and how such event qualifies as an event of Force Majeure;

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4.0.1.2 The permitted suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure and the effects thereof; and

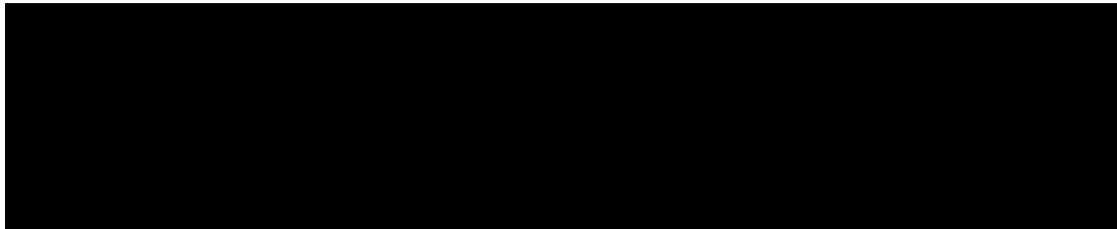
4.0.1.3 The Party claiming Force Majeure exercises commercially reasonable efforts to eliminate or mitigate the effects of the Force Majeure condition.

4.1 Burden of Proof

4.1.1 The burden of proof as to whether a Force Majeure has occurred shall be upon the Party claiming Force Majeure.

4.2 Payment and Security Obligations

4.2.1 No payment obligation arising under this Agreement, and no obligation to provide the Customer Contract Security Requirement, shall be excused by any event of Force Majeure declared by either Party.



**ARTICLE FIVE
ASSIGNMENT; BINDING EFFECT**

5.0 Binding Effect

5.0.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

5.0.2 The Buyer is a Party to the 2015-2019 Large Curtailable Special Contract dated March 12, 2015 (the "2015 Special Contract") with Wisconsin Electric Power Company, an Affiliate of Seller. The 2015 Special Contract terminates on December 31, 2019. In the event a COD is not achieved prior to December 31, 2019, this Agreement shall be binding upon both Parties on and after January 1, 2020 and Buyer shall not be permitted to terminate this Agreement other than pursuant to Section 2.0.5.2.

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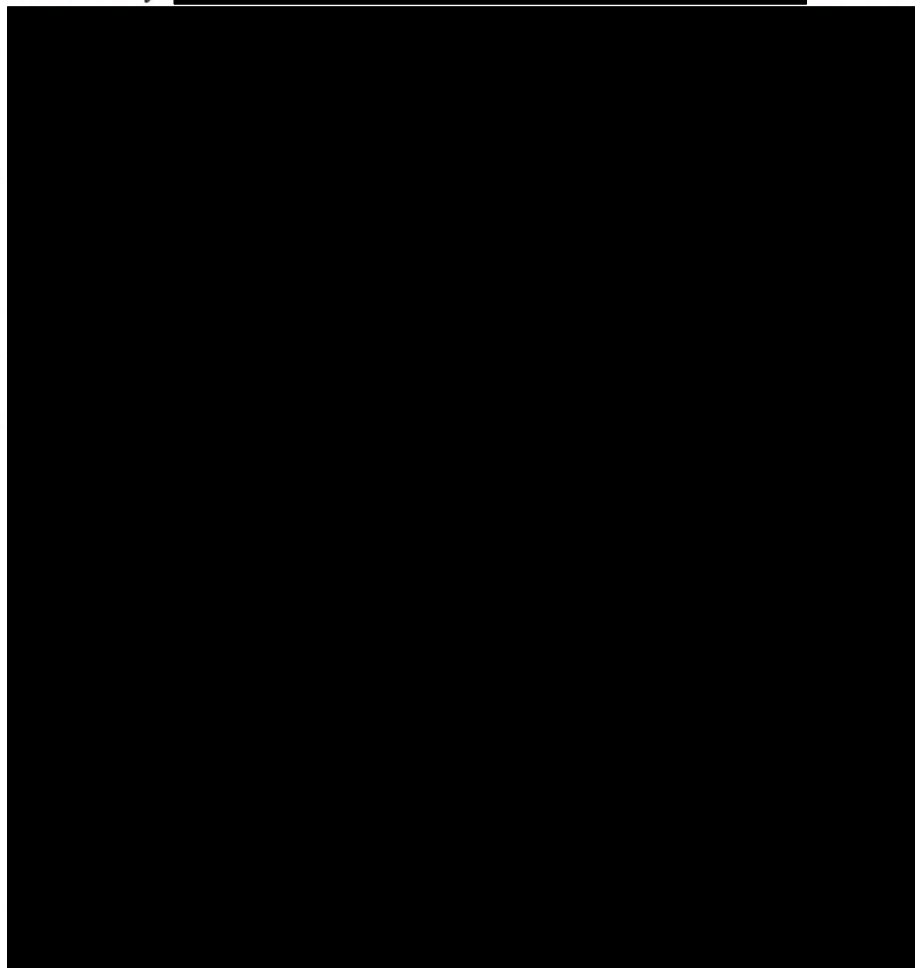
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5.1 Assignment

5.1.1 Upon the incorporation of UMERL and the transfer of Wisconsin Electric's electric distribution assets in Michigan and retail electric business in Michigan (other than assets and contracts used to provide service to Buyer), Seller shall assign its rights, obligations and interests in this Agreement to UMERL.

5.1.2 Except as provided herein, neither Party shall assign this Agreement or any portion thereof to any Person without the prior written consent of the other Party. [REDACTED]



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**ARTICLE SIX
MISCELLANEOUS**

6.0 Governing Law

6.0.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies without regard to conflict of laws rules thereof.

6.1 Cooperation; Further Assurances

6.1.1 The Parties agree to provide such reasonable cooperation to each other as necessary to give effect to the terms of this Agreement.

6.2 Amendment

6.2.1 No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties to be bound thereby.

6.3 Waiver

6.3.1 The failure or delay of either Party hereto to enforce at any time any of the provisions of this Agreement, or to require at any time performance of the other Party hereto of any of the provisions hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

6.4 No Third-Party Beneficiaries

6.4.1 This Agreement is for the sole benefit of the Parties hereto, and except as specifically provided herein, nothing in this Agreement or any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a party to this Agreement. Except as specifically provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except Buyer and Seller. The Parties specifically disclaim any intent

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to create any rights in any Person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.

6.5 No Dedication of Assets

6.5.1 No undertaking by a Party hereto to the other Party hereto under any provision of this Agreement shall constitute the dedication of that Party's assets or any portion thereof to the public or to its obligations under this Agreement.

6.6 No Partnership

6.6.1 This Agreement shall not be construed to create or give rise to any partnership, joint venture, agency or other relationship between Seller and Buyer other than that of purchaser and seller. Each Party shall be solely and individually responsible for its own covenants, obligations and liabilities as herein provided, and the Parties do not intend to create any joint, several or joint and several obligations to any third party. Neither this Agreement, nor any grant, lease or license related thereto, shall create or be construed to create any new entity, such as a partnership, association or joint venture.

6.7 Forward Contract

6.7.1 The Parties acknowledge and agree that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder (including any guaranty or Customer Contract Security Requirement) shall each, and together, constitute one and the same "forward contract" within the meaning of the United States Bankruptcy Code, and Seller and Buyer shall each constitute a "forward contract merchant" under the United States Bankruptcy Code.

6.8 Confidentiality

6.8.1 The Parties agree that neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or its Affiliate's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, balancing area, regional reliability council, or independent system operator rule, or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall

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be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

6.9 Headings

6.9.1 The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

6.10 Counterparts

6.10.1 This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.11 All notices or other communications which may be or are required to be given by a party to the other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; or (iii) delivered by a recognized overnight or personal delivery service, addressed as and to the parties' representatives set forth below. Notices shall be effective when delivered in accordance with the foregoing provisions, whether or not accepted by, or on behalf of, the party to whom the notice is sent. Each party may designate by written notice in accordance with this Section to the other party a new address to which any notice may thereafter be given.

If to Seller, then to:	WEC Energy Group, Inc. 333 W. Everett Street, A214 Milwaukee, WI 53203 Attention: Vice President - WEA
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If to Buyer, then to:	Tilden Mining Company, L.C. 200 Public Square, Suite 3300 Cleveland, OH 44114 Attention: Chief Legal Officer
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6.12 Entire Agreement

6.12.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes and terminates any letters of intent, term sheets and all prior and

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contemporaneous agreements, understandings, negotiations and discussions between the Parties, whether oral or written, regarding said subject matter, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officer as of the date first written above.

SELLER:

WEC ENERGY GROUP, INC.

By: _____

Allen B. Everett

Name: _____

Allen B. Everett

Title: _____

Chief Executive Officer

Date: _____

Aug 12, 2016

BUYER:

TILDEN MINING COMPANY L.C.

BY THE CLEVELAND-CLIFFS IRON COMPANY, ITS MANAGING AGENT

By: _____

Terry G. Fredor, II

Name: _____

TERRY G. FREDOR, II

Title: _____

PRESIDENT

Date: _____

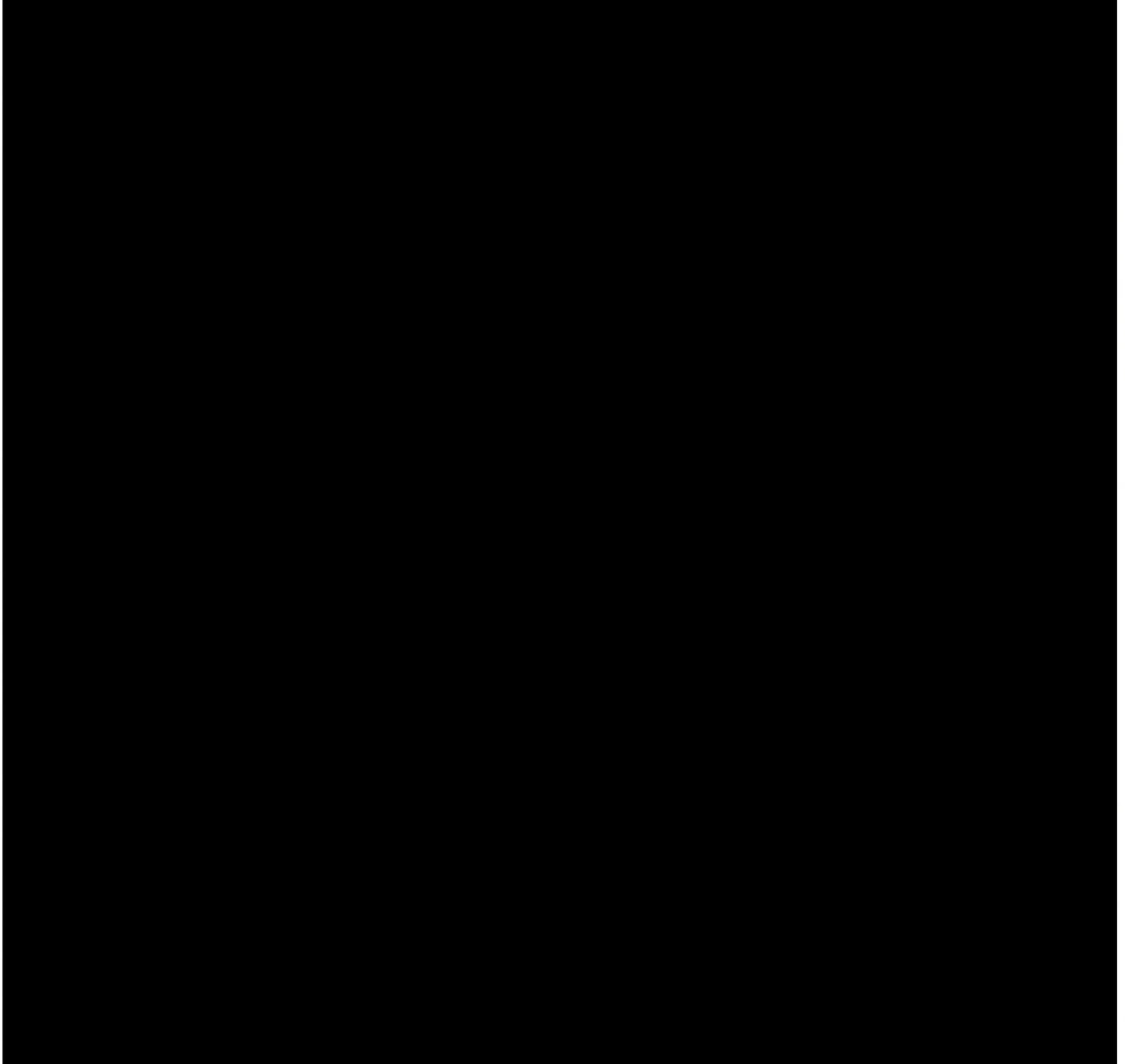
8/12/2016

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EXHIBIT A



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**EXHIBIT B
Operations Protocol**

**Dated: TBD
Supersedes the Operations Protocol dated: TBD**

This Operations Protocol shall govern the responsibilities of Buyer and Seller to effectuate the implementation of the Agreement. It may be amended as necessary in accordance with the requirements of Section 2.5 of the Agreement.

Responsibilities of Buyer

- 1.
- 2.

Responsibilities of Seller

- 1.
- 2.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Parties has caused this Exhibit B – Operations Protocol to be executed by its duly authorized representative as of the date first written above.

**SELLER:
WEC ENERGY GROUP INC.**

By: _____

Name: _____

Title: _____

Date: _____

**BUYER:
TILDEN MINING COMPANY L.C.
BY THE CLEVELAND-CLIFFS IRON COMPANY, ITS MANAGING AGENT**

By: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT C

